City of Lafayette Staff Report

For:	City Council
By:	Greg Wolff, Senior Planner
Date Written:	October 6, 2008
Meeting Date:	October 14, 2008
Project:	**GP01-05 / RZ01-05 BRUCE TORQUEMADA, LAFAYETTE PROPERTIES, (APPLICANT & OWNER), R-15 ZONING:** Lafayette Park Terrace – Proposed ~~20-Unit~~ 18-Unit Condominium Project at 3235 Mt. Diablo Court, a 2-acre site at the terminus of Mt. Diablo Court. APNs: 233-131-020 & 022

STATUS

The City Council last considered this project on September 22, 2008. The applicant presented revised plans submitted September 8, 2008 showing relocation of the three units along the west edge of the project (two units were eliminated altogether, the third was relocated to the east side). The west wall of the building was pulled back an additional 20-feet along the shared property line with Lafayette Pointe and the entirety of the building was dropped one foot further into the ground.

LETTER FROM KATHY SKOVGARD & RANDY CASTRO WITH 9 REQUESTS

Kathy Skovgard, on behalf of the residents of Lafayette Pointe and Randy Castro, President, Pleasant Hills and Valleys Homeowners Association submitted a letter the day of the meeting with nine requests listed below. The applicant agreed to all items with the exception of lowering the building by an additional two feet. A compromise was reached between the applicant, the neighbors and the City Council and the building will be lowered one additional foot beyond the one foot lowering shown in the September 8, 2008 plans. The nine items from the Skovgard / Castro letter were:

1) Please add a Condition of Approval to allow the nearby residents immediately to the east, south and north to be included in any discussions and decisions regarding the landscaping as it impacts their properties;
   Staff Comment: The landscape plan is part of the set of drawings considered by the City Council. The project architect has stated that he would be happy to have the project landscape architect to meet with the neighbors in the field when plants are delivered to the site to fine tune their placement for privacy / views. The landscape plan will be part of the approved plans and significant deviation from the approved plan will require review & approval by the City of Lafayette. No additional condition of approval has been drafted.

2) Please include in the process and ensure that notice is given to the residents of Lafayette Pointe regarding the final placement and use of the pocket park near Mt. Diablo Boulevard;
   Staff Comment: The conditions of approval require review and approval of the design of the pocket park by the Design Review Commission and Parks, Trails & Recreation Commission, amongst others. Public notification will occur beforehand and public meetings will provide for neighbor input on the design.

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3) Please include in the process and ensure that notice is given to the surrounding residents regarding any progress pertaining to the pathway from Mt. Diablo Court to Pleasant Hill Road;
Staff Comment: If and when the continuation of the pathway east of the subject property is at the design stage, the matter will be considered by the Circulation Commission and public notification will be provided by mail and A-frame signs.

4) Please require public review with the appropriate City agency of the new proposed signal light, its timing and crosswalk once the signal light is installed and operational at Mt. Diablo Boulevard and Mt. Diablo Court (see discussion below);
Staff Comment: The City Engineer and Circulation Commission can review the signal timing and operation of any traffic signal in Lafayette at any time. The City Engineer will ensure that the signal at Mt. Diablo Boulevard and Mt. Diablo Court is appropriately designed and correctly installed. No additional review is necessary after installation of the signal.

5) Please provide for review by the property owners to the immediate west and south of the building of the proposed final roofing materials and colors;
Staff Comment: The conditions of approval stipulate that the roofing materials shall be neutral color and non-reflective and require review and approval by the Design Review Commission. The matter will be placed on the consent calendar of the Design Review Commission with a Notice of Public Hearing sent to each property owner within 300-ft. of the subject property at least 10-days prior to the meeting, thus allowing review and comments from the neighbors. See condition of approval D3.

6) Please eliminate the outside patio on the southwest corner of the building;
Staff Comment: The applicant agreed to eliminate the common area patio at the southwest corner of the building. The conditions of approval require the construction drawings to show not this patio. Please see condition of approval G1(c).

7) Please add a Condition of Approval requiring a non-obtrusive security fence around the property to prevent trespassing to and from adjacent properties;
Staff Comment: If a property owner is concerned about trespassers, they have the right to put up a fence on their own property or in conjunction with the neighbor. No fencing is shown as part of the proposed or approved plans. The applicant offered to explore installation of a fence with the neighbors. If the applicant desires to install a fence as part of the project, it requires public notification and review by the Design Review Commission. Please see condition of approval G1(b).

8) Please require clarification of the fence along the eastern border –a fence that does not show on any of the available plans-- so as to provide possible mitigation of its impact on the adjacent property owners;
Staff Comment: Please see response to #7 above.

9) Finally, and most importantly, please have the applicant reduce the height of the building by another two feet (see discussion below);
Staff Comment: The applicant agreed to lower the building, by further excavation, one additional foot beyond the one foot lowering shown in the September 8, 2008 plans. The conditions of approval require the construction drawings to show the additional one foot lowering of the building. Please see condition of approval G1(a).

RECOMMENDATION

(1) Adopt City Council Resolution 2008-035 adopting the Mitigated Negative Declaration and approving the Project subject to conditions;
(2) Waive second reading and adopt Ordinance 580 approving the Rezoning and the Development Agreement.

ATTACHMENTS

1. City Council Resolution 2008-035
2. Ordinance 580
3. Conditions of Approval
4. Mitigated Negative Declaration
5. Development Agreement

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette adopting a Mitigated Negative Declaration and approving a General Plan Amendment, Vesting Tentative Map, Design Review, Tree Permit, and Grading Permit for Lafayette Park Terrace, an 18-unit condominium project located at 3235 Mt. Diablo Ct. APNs: 233-131-020 & 022)

Resolution No. 2008-035

WHEREAS, in April 2005**,** Bruce Torquemada filed an application on behalf of Lafayette Properties (Owner), to construct a multiple-family residential condominium project more fully described as follows, (hereafter the "Project"):

GP01-05 BRUCE TORQUEMADA, LAFAYETTE PROPERTIES, (APPLICANT & OWNER), R-15 ZONING, REQUESTS FOR:

(1) General Plan Amendment to change the land use designation from Medium Density Single-Family Residential (up to 6 dwelling units per acre) to Low Density Multiply-Family Residential (up to 17 dwelling units per acres) and to allow a residential building up to 41-ft. in height;
(2) Rezoning the subject property from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA);
(3) Vesting Tentative Map (TR9125) to create 18 condominiums and common area; and
(4) Design Review approval of the project including the approximately 32,000 sq.ft. residential condominium building with approximately 20,000 sq.ft. of underground parking garage
(5) Tree Permit to remove protected trees associated with the development project
(6) Grading Permit to grade an estimated 20,000 cubic yards of earth
(7) Development Agreement
(8) Consideration of adoption of a Mitigated Negative Declaration of Environmental Impacts. The project site is 2-acres located at 3235 Mt. Diablo Ct. APNs: 233-131-020 & 022

WHEREAS, the Project was referred to all affected public agencies pursuant to Government Code §65352;

WHEREAS, the Project was reviewed, studied, and found to comply with the California Environmental Quality Act ("CEQA") as more fully described below;

WHEREAS, over the course of three years the Design Review Commission, Planning Commission, and City Council of the City of Lafayette conducted more than twenty duly noticed public hearings on the Project, at which time all persons wishing to testify in connection with the Project were heard and the Project was fully studied;

WHEREAS, on September 10, 2007 the City Council of the City of Lafayette ("City Council") considered the matter at a duly noticed public hearing, where it received a written and oral staff report, testimony from the applicant and the public. The Council concluded that it could support the proposed multiple-family residential land use but could not support the design of the two-stories-over-parking, 28-unit condominium project and therefore referred the matter back to the Planning Commission with direction to the applicant to "significantly reduce the height, size, bulk and mass of the project."

WHEREAS, on October 18, 2007 the Planning Commission determined that the applicant's redesign of the project resulting in a one-story-over-parking, 20-unit condominium project met the direction set by the City Council on September 10, 2007 by significantly reducing the height, size, bulk and mass of the project, and considering the significant change in the design of the project, the Planning Commission referred the matter to the Design Review Commission for review;

WHEREAS, on February 26, 2008 the Design Review Commission recommended approval of the 20-unit Project, being able to make the required findings and supporting the proposed conditions of approval;

WHEREAS, on April 17, 2008 and May 15, 2008, the Planning Commission recommended adoption of the Mitigated Negative Declaration and approval of the 20-unit Project, being able to make the required findings and supporting the proposed conditions of approval;

WHEREAS, on July 14, 2008, July 28, 2008 and September 22, 2008, the City Council conducted duly noticed public hearings on the Project, at which time all persons wishing to testify in connection with the Project were heard and the Project was fully studied; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW THEREFORE BE IT RESOLVED THAT:

SECTION 1. A Mitigated Negative Declaration and an Initial Study of environmental impacts have been prepared for the Project in accordance with the California Environmental Quality Act (CEQA) and the state CEQA Guidelines.

SECTION 2. Based on the Mitigated Negative Declaration, the Initial Study, the administrative record, and all written and oral evidence presented, the City Council finds that all environmental impacts of the Project are less than significant or can be mitigated to a less than significant level pursuant to the mitigation measures outlined in the Mitigated Negative Declaration and the Initial Study. The City Council further finds that there is no substantial evidence in the record supporting a fair argument that the Project may result in significant environmental impacts. The City Council finds that the Mitigated Negative Declaration contains a thorough, objective, and accurate reporting of the environmental impacts associated with the Project and reflects the independent judgment and analysis of the City Council.

SECTION 3. The City Council further finds and declares that the Project will not result in any changes to the following resources: (A) riparian land, rivers, streams, watercourses and wetlands; (B) native and non-native plant life and the soil required to sustain habitat for fish and wildlife; (C) rare and unique plant life and ecological communities dependant on plant life; (D) listed threatened and endangered plants and animals and the habitat in which they are believed to reside; (E) all species listed as protected or identified for special management in the Fish and Game Code, the Public Resources Code, the Water Code or regulations adopted thereunder; (F) all marine and terrestrial species subject to the jurisdiction of the Department of Fish and Game and the ecological communities in which they reside; and (G) all air and water resources, the degradation of which will individually or cumulatively result in a loss of biological diversity among the plants and animals residing in that air and water.

SECTION 4. The City Council finds that the Project is consistent with the applicable goals, policies and programs contained in the 2002 Lafayette General Plan as outlined in the attached "General Plan Consistency Table."

SECTION 5. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the staff report prepared for the July 14, 2008, July 28, 2008 and September 22, 2008 meetings, the required findings for the requested permits have been evaluated by the City Council as follows:

REQUIRED FINDINGS

§6-213 Findings for a General Plan Amendment

A. The change proposed is consistent with the General Plan and each of its elements.
Please see Exhibit "A" General Plan Consistency Evaluation *attached to this resolution for the analysis of the project's consistency with the Lafayette General Plan.*

B. Community need is demonstrated for the change proposed.
A stated goal in the General Plan is to provide adequate housing stock for all segments of the community.

As the costs of land, construction and single-family residences rise, there is a need for smaller owner-occupied multiple-family residential units within the city. Condominiums can serve as starter homes for young couples or as smaller homes for "empty nesters" who wish to downsize while remaining in Lafayette. The project will also increase the affordable housing stock expressly reserved for those with low income levels.

Findings for Approval of a Tentative Map (§66474 Gov't Code)

1. The proposed map is consistent with applicable general and specific plans.
   Please see Exhibit "A" General Plan Consistency Evaluation *attached to this resolution for the analysis of the project's consistency with the Lafayette General Plan.*

2. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
   Please see Exhibit "A" General Plan Consistency Evaluation *attached to this resolution for the analysis of the project's consistency with the Lafayette General Plan.*

3. The site is physically suitable for the type of development.
   The Geotechnical Exploration, Lafayette Park Terrace, *prepared by EnGeo Geotechnical & Environmental Consultants, dated July 24, 2006, concludes that the site is physically suitable for the proposed multiple-family residential building. Stitch piers, soil nailing, key ways and engineered backfill are components of the site engineering to ensure long term stability of the site. The Design Review Commission and Planning Commission have reviewed the project and are supportive of the siting and physical layout of the project.*

4. The site is physically suitable for the proposed density of development.
   The Geotechnical Exploration, Lafayette Park Terrace, *EnGeo Geotechnical & Environmental Consultants, July 24, 2006 concludes that the site is physically suitable for the proposed multiple-family residential building. The proposed density of 9 dwelling units per acre is lower than the density range of 12 – 34 DU/acre for existing multiple-family residential densities in the vicinity of the project. The applicant has demonstrated that the site can support the proposed density and square footage.*

5. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
   The project has been evaluated as required by the California Environmental Quality Act (CEQA) and the conclusion of that review is that the project will not have a significant impact on the environment as the result of mitigations incorporated into the project design and imposed by the City of Lafayette. Therefore, the project will not be likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. Please refer to the Mitigated Negative Declaration of Environmental Impacts.

6. The design of the subdivision or type of improvements is not likely to cause serious public health problems.
   The project has been evaluated as required by the California Environmental Quality Act (CEQA) and the conclusion is that the project will not have a significant impact on the environment as the result of mitigations incorporated into the project design and imposed by the City of Lafayette. Therefore, the project will not be likely to cause serious public health problems. Please refer to the Mitigated Negative Declaration of Environmental Impacts

7. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.
   The site has private property on three sides and CalTrans right-of-way on the fourth. The property that contains an existing sanitary sewer easement along the northern property line. A condition of approval requires the developer to grant a pedestrian access easement along the northern property line, corresponding to the existing sanitary sewer easement, for a future pedestrian connection between Mt. Diablo Court and Pleasant Hill Road. No structures are allowed in the sanitary sewer easement and therefore a pedestrian path would be a good use of the land. The subdivision and its improvements will not

conflict with any easements for access through or use of the property, but would instead improve access for the public at large.

§6-275 Specific Findings Required for Design Review.

1. Every provision of this chapter is complied with;
   The applicant has complied with the application requirements set forth in Chapter 6-2.

2. The approval of the plan is in the best interest of the public health, safety and general welfare;
   The project has been evaluated as required by the California Environmental Quality Act (CEQA) and the conclusion is that the project will not have a significant impact on the environment as the result of mitigations incorporated into the project design and imposed by the City of Lafayette. The applicant has demonstrated that the project is in the best interest of the public's general welfare. A stated goal in the General Plan is to provide adequate housing stock for all segments of the community. As the costs of land, construction and single-family residences rise, there is a need for smaller owner-occupied multiple-family residential units within the city. Condominiums can serve as starter homes for young couples or as smaller homes for "empty nesters" who wish to downsize while remaining in Lafayette. The project will also increase the affordable housing stock expressly reserved for those with moderate or low income levels.

3. General site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety and similar elements have been designed to provide a desirable environment for the development;
   The project has been sited in the north-central portion of the site, with the highest roof ridge lower in elevation than the finished floor level of the houses uphill to the south and condominiums to the west. Adequate access is provided from Mt. Diablo Court and parking is provided in an on-site, underground garage in excess of that required by code. Public and private outdoor living space is provided for residents. Existing and new landscaping is provided around the site to soften the building, and to provide screening and privacy.

4. General architectural considerations, including the character, scale and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings; and
   The Design Review Commission and Planning Commission have both reviewed the project and have required a high caliber of design. Dark colors, durable materials, shielded light fixtures, and robust landscaping have been required by the Design Review Commission, mitigating visual impacts, both day and night. The building is compatible in scale with the multiple-family residential projects immediately adjacent to the west, with superior architecture. By its nature, the multiple-family residential building will not be of compatible scale with the single-family residences some distance to the east and south. The site planning, architectural design, the distance between structures, the difference in elevation between structures, and landscape screening result in the visibility of the project being adequately mitigated when from single-family residences.

5. General landscape considerations, including the location, type, size, color, texture and coverage of plant materials, provisions for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to ensure visual relief, to complement buildings and structures and to provide an attractive environment for the enjoyment of the public.
   The landscape plan shows extensive perimeter planting, including many native species, to provide softening of the building and screening for those viewing inward to the site and outward from the site. Adequate public open space and private open space has been provided for the residents of the project.

§3-701 Findings Required For Approval of a Grading Permit

1. The grading will not endanger the stability of the site or adjacent property or pose a significant ground movement hazard to an adjacent property. The decision making authority may require the project geotechnical engineer to certify the suitability of the project supported by appropriate technical studies, including subsurface investigation;
   The Geotechnical Exploration, Lafayette Park Terrace, *by EnGeo Geotechnical & Environmental*

Consultants, July 24, 2006 concludes that the site is physically suitable for the proposed multiple-family residential building. Stitch piers, soil nailing, key ways and engineered backfill are components of the site engineering to ensure long term stability of the site.

2. The grading will not significantly increase erosion or flooding affecting the site or other property and will not cause impacts to riparian habitats, stream channel capacity or water quality that cannot be substantially mitigated;
   Project grading consists primarily of cut into the existing hillside behind the building, in part to reduce the overall height of the project. A Stormwater Control Plan has been prepared in order to mitigate any potential adverse impacts on storm water quality. There are no streams or riparian habitat in the vicinity of the project.

3. The grading, when completed, will result in a building site that is visually compatible with the surrounding land;
   Project grading is designed to return the hillside to substantially its prior form, albeit at a greater slope than exists prior to the project, and with landscape planting. The larger visual changes will stem from construction of the building and significant screening planting on the hillside where currently it is an open grassy hillside without larger forms of vegetation.

4. The grading is sensitive to the existing landforms, topography and natural features on the site;
   The site is generally a moderate to steep upslope from north to south. The project will result in this same configuration with a somewhat steeper upslope behind the building. The building, existing vegetation and new landscaping will mitigate off site views of this slope.

5. The design of the project preserves existing trees on the site and trees on adjoining property to the extent possible.
   The project preserves the majority of trees around the perimeter of the site and all trees on adjoining properties. Trees slated for removal are not native to Lafayette, are central to the property, and generally within the proposed building footprint.

§6-1707 Permit Category II - Protected tree on property associated with a development application.

Determination. The application shall be approved or denied by the hearing body based on the following factors:

1. Health, condition and form of the tree;
2. Number, size and location of other trees to remain in the area;
3. Relationship of the property to riparian corridors, a scenic or biological resource area or a restricted ridgeline area;
4. Role of the tree in a tree grove or woodland habitat;
5. Value of the tree to the neighborhood in terms of visual effect, wind screening and privacy;
6. Damage caused by the tree to utilities, streets, sidewalks or existing private structures or improvements;
7. Role of the tree in mitigating drainage, erosion or geologic stability impacts; and
8. Health and condition of the area within the protected perimeter.
9. Necessity for the pruning or removal in order to construct a required improvement on public property or within a public right-of-way or to construct an improvement that allows reasonable economic enjoyment of private property;
10. Extent to which a proposed improvement may be modified to preserve and maintain a protected tree; and
11. Extent to which a proposed change in the existing grade within the protected perimeter may be modified to preserve and maintain a protected tree.
    The arborist report analyzes fifty three trees on the site. Twenty nine trees which are not native to Lafayette are proposed for removal. The majority of trees proposed for removal are Coast Redwoods which straddle the property line between the two parcels that together constitute the project site. The trees are of small-to-moderate caliper at 4.5-ft. above grade and are fair to good health. None of the trees proposed for removal are important to the wider neighborhood for screening, because of their character, or as part of a larger grove. The majority of the trees at the perimeter of the site will be retained and supplemented with new

screening trees which are native to Lafayette. The applicant is required to plant replacement trees in restitution for all trees greater than 6" DBH that will be removed as part of the project, pursuant to §6-1710 LMC "Tree Protection."

SECTION 6. The City Council hereby adopts the Mitigated Negative Declaration for the Project attached to this Resolution as Exhibit "D" and incorporated herein by reference. The mitigation measures contained therein are fully enforceable as conditions of project approval.

SECTION 7. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, the staff reports prepared for the July 14, 2008, July 28, 2008 and September 22, 2008 meetings and the findings made in this Resolution, the City Council hereby approves the following:

(1) General Plan Amendment to change the land use designation from Medium Density Single-Family Residential (up to 6 dwelling units per acre) to Low Density Multiply-Family Residential (up to 17 dwelling units per acres) and to allow a building up to 41-ft. in height;

~~(2) Rezoning the subject property from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA); and~~ (See Ordinance 580 for City Council action on the Rezoning)

(3) Vesting Tentative Map TR9125 creating 18 condominiums and common area; and

(4) Design Review of the project; and

(5) Tree Permit to remove 29 non-native protected trees; and

(6) Grading Permit to grade an estimated 20,000 cubic yards of earth;

~~(7) Development Agreement~~ (See Ordinance 580 for City Council action on the Development Agreement)

SECTION 8 . The Planning and Building Services Manager shall modify General Plan Map I-1 Land Use in accordance with this Ordinance to indicate thereon the land use designation applicable to the Property.

SECTION 9. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: Planning & Building Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, California 94549.

SECTION 10. The City Council directs staff to file a notice of determination and a certificate of fee exemption (*de minimis* impact finding) with Contra Costa County within five (5) working days of adoption of this Resolution.

SECTION 11. This Resolution shall become effective thirty (30) days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on October 14, 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

ATTACHED
Exhibit A: General Plan Consistency Table
Exhibit B: Legal Description of the Property
Exhibit C: Conditions of Approval
Exhibit D: Mitigated Negative Declaration

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of Lafayette to change the zoning from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA) and to approve a Development Agreement for Lafayette Park Terrace, an 18-unit condominium project on 2-acres located at 3235 Mt. Diablo Ct. APNs 233-131-020 & 233-131-022	)	Ordinance No. 580

WHEREAS, in April 2005**,** Bruce Torquemada filed an application on behalf of Lafayette Properties (Owner), to construct a multiple-family residential condominium project more specifically described as follows, (hereafter the "Project"):

GP01-05 BRUCE TORQUEMADA, LAFAYETTE PROPERTIES, (APPLICANT & OWNER), R-15 ZONING, REQUESTS FOR:

(1) General Plan Amendment to change the land use designation from Medium Density Single-Family Residential (up to 6 dwelling units per acre) to Low Density Multiply-Family Residential (up to 17 dwelling units per acres) and to allow a residential building up to 41-ft. in height;
(2) Rezoning the subject property from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA);
(3) Vesting Tentative Map (TR9125) to create 18 condominiums and common area; and
(4) Design Review approval of the project including the approximately 32,000 sq.ft. residential condominium building with approximately 20,000 sq.ft. of underground parking garage
(5) Tree Permit to remove protected trees associated with the development project
(6) Grading Permit to grade an estimated 20,000 cubic yards of earth
(7) Development Agreement
(8) Consideration of adoption of a Mitigated Negative Declaration of Environmental Impacts. The project site is 2-acres located at 3235 Mt. Diablo Ct. APNs: 233-131-020 & 022

WHEREAS, the action of the City Council of the City of Lafayette ("City Council") on the General Plan Amendment, vesting tentative map, design review, tree permit and grading permit can be found in City Council Resolution 2008-035; and

WHEREAS, on April 17, 2008 and May 15, 2008, in addition to multiple prior occasions as shown in the public record, the Planning Commission of the City of Lafayette ("Planning Commission") conducted duly noticed public hearings to consider the request to change the zoning from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA) ("Rezoning") and the Development Agreement for approximately 2-acres of real property located at 3235 Mt. Diablo Court, Lafayette, California. Assessor's Parcel Numbers 233-131-020 & 233-131-022; and

WHEREAS, on April 17, 2008 and May 15, 2008, the Planning Commission based its recommendation to approve the Rezoning and Development Agreement on its findings and recommendation to adopt the Mitigated Negative Declaration in compliance with the California Environmental Quality Act, certain conditions of approval as outlined in City Council Resolution 2008-035 and the findings set forth below; and

WHEREAS, on July 14, 2008, July 28, 2008 and September 22, 2008, the City Council conducted duly noticed public hearings on the Rezoning and Development Agreement, at which time all persons wishing to testify in connection with the Project were heard and the Project was fully studied.

NOW THEREFORE BE IT RESOLVED THAT:

SECTION 1. Rezoning. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings made in this Ordinance, the real property described in the legal description set forth in Exhibit "B," comprising approximately 2-acres of real property located at 3235 Mt. Diablo Court, in the City of Lafayette, California. ("Property"), is hereby rezoned from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA), as that zone is described in Chapter 6-8 of Title 6 of the Lafayette Municipal Code.

SECTION 2. Rezoning Findings. Pursuant to Lafayette Municipal Code §6-213 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council hereby makes and adopts the following findings:

A. The change proposed is consistent with the General Plan and each element of it.
The proposed Rezoning is consistent with the General Plan and each element of it as detailed in Exhibit "A" General Plan Consistency Evaluation *attached to this Ordinance.*

B. Community need is demonstrated for the change proposed.
A stated goal in the General Plan is to provide adequate housing stock for all segments of the community. As the costs of land, construction and single-family residences rise, there is a need for smaller owner-occupied multiple-family residential units within the city. Condominiums can serve as starter homes for young couples or as smaller homes for "empty nesters" who wish to downsize while remaining in Lafayette. The project will also increase the affordable housing stock expressly reserved for those with moderate or low income levels.

SECTION 3. Development Agreement Findings. Pursuant to California Government Code §65867.5 and based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council hereby makes the following findings and adopts the Development Agreement:

A. That the Development Agreement promotes the public health, safety and welfare of the community. *The Development Agreement promotes the public health, safety and welfare of the community because it requires the developer, among other things, to install a traffic signal, landscaped medians, street lights and a sidewalk on Mt. Diablo Boulevard improving vehicular and pedestrian safety. The Project has been evaluated pursuant to the California Environmental Quality Act (CEQA) and it has been determined that the Project, with mitigations, will not have any significant impacts on the environment.*

B. That the Development Agreement is consistent with City's General Plan.
The Development Agreement is consistent with the city's General Plan, as amended, because it increases the City's housing stock available to all segments of community, including three income restricted affordable housing units. The Development Agreement requires the Developer to install off site improvements like a traffic signal, landscaped medians, street lights and sidewalk, and to provide and easement that can be used for future non-vehicular connection between Mt. Diablo Court and Pleasant Hill Road. The Project has been evaluated in detail in the General Plan Consistency Evaluation *attached to this ordinance.*

SECTION 4. CEQA. The City Council hereby finds that the environmental effects of the Rezoning and Development Agreement have been thoroughly analyzed in the Mitigated Negative Declaration accompanying the General Plan Amendment in City Council Resolution No. 2008-035. No additional environmental review is necessary under the California Environmental Quality Act.

SECTION 5. Zoning Map. The Planning and Building Services Manager shall modify the Official Zoning Map of the City of Lafayette in accordance with this Ordinance to indicate thereon the zoning applicable to the Property.

SECTION 6. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

SECTION 7. Publication. The City Clerk shall either (a) have this ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing ordinance was introduced at a meeting of the City Council of the City of Lafayette held on September 22, 2008, and was adopted and ordered published at a meeting of the City Council held on October 14, 2008 by the following vote:

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on October 14, 2008, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

ATTACHED
Exhibit A: General Plan Consistency Evaluation
Exhibit B: Legal Description of the Property
Exhibit C: Development Agreement

CITY COUNCIL RESOLUTION 2008-035 • EXHIBIT "C"
CONDITIONS OF APPROVAL
GP01-05 LAFAYETTE PARK TERRACE

The conditions of approval are broken out into the following sections: GENERAL • DESIGN • STREETS & TRAFFIC • DRAINAGE • GRADING • LANDSCAPING • FIRE • SANITARY • MITIGATION MEASURES

GENERAL	FOR STAFF USE ONLY
G1. The City approves GP01-05 based on the submitted plans received by the Planning Services Division on September 8, 2008, including the Tentative Map and landscape plan as modified by these conditions. (a) On September 22, 2008 the applicant agreed to lower the building, by further excavation, one additional foot beyond that shown on the September 8, 2008 plans. The construction drawings shall show each finished floor elevation and the roof height being one foot lower than the September 8, 2008 plans. (b) No fencing is shown as part of the approved plans. If the applicant desires to install a fence as part of the project, it requires public notification and review by the Design Review Commission at a public hearing. (c) On September 22, 2008 the applicant agreed to eliminate the common area patio at the southwest corner of the building. The construction drawings shall show this patio eliminated from the project.	
G2. No changes shall be made to the approved plans or color and materials board without review and approval by the Planning Services Division and/or appropriate commissions as determined by the Planning & Building Services Manager. If changes are approved by the City, the applicant shall prepare three sets of revised plans for review and approval by the Planning Services Division. Once the revised plans are stamped "approved", the applicant shall submit the revised plans to the Lamorinda Building Inspection Office for their review and approval.	
G3. Construction plans shall conform to the approved design drawings. The applicant shall indicate to staff at the time of submittal for building permit plan check, any and all modifications, clarifications, or changes on the construction drawings from the approved design drawings.	
G4. Storage of construction materials, portable toilets and debris must be stored and staged on the subject property for this project. Temporary storage of construction boxes or construction materials must be kept on the property and out of any private easement or public right-of-way to permit emergency vehicle access during the construction project.	
G5. Site improvement and construction work, including set-up, loading or unloading of materials or equipment, or the maintenance, refueling or tune-up of any equipment, performed as part of this project is restricted to the hours between 8:00 a.m. and 6:00 p.m., Monday through Friday. No noise-generating construction work shall be performed on Sundays or national holidays. Violation of this condition may result in issuance of a Stop Work Order or administrative citations.	

G6. Prior to issuance of a grading, building, or demolition permit, whichever is first, the developer shall duplicate these conditions of approval set forth in this document "Exhibit A" in the construction drawing plan sets for the benefit of the contractor(s), subcontractor(s), and inspector(s). All sheets in the construction drawings shall be the same size (e.g. 24" x 36").	
G7. Prior to issuance of a grading, building, or demolition permit, whichever is first, the developer shall show tree protection measures on the site plan and grading plan in the construction drawing plan sets, per the City standard tree fencing detail. A copy of this detail is available from Planning Services Division staff or by visiting www.lovelafayette.org > City Departments > Planning > Planning Handouts > Tree Protection Guidelines.	
G8. Prior to issuance of a grading, building, or demolition permit, whichever is first, the developer shall install tree protection fencing around all trees to remain on the property in the vicinity of construction activity, as shown in the City's Tree Protection Guidelines. The applicant shall notify Planning Services Division staff who will inspect the tree protection fencing to ensure they are installed in conformance with the Guidelines, and are substantial enough to reasonably protect the trees. The applicant is responsible for ensuring that tree protection measures remain intact throughout the construction process. Staff will conduct site inspections throughout the construction process without prior notice to the applicant or property owner. If the protection measures are damaged or otherwise removed, the project shall be subject to a stop work order until such time as corrective measures have been taken to the satisfaction of Planning Services Division staff. Any trees identified on the plans to remain that are damaged or destroyed as a result of construction activities shall be replaced at a ratio and size deemed appropriate by the Planning & Building Services Manager.	
G9. Prior to issuance of a grading, building, or demolition permit, whichever is first, the developer shall install a sign stating the allowed days and hours for construction, which shall be posted in a conspicuous place along the front property line where it can be viewed by all contractors, subcontractors and the general public. The sign shall be no smaller than 2 square feet and no larger than 4 square feet. Lettering shall be no less than 3 inches and no more than 5 inches in height. Construction sign shall state, "Hours of construction, Monday - Friday, 8:00 A.M. to 6:00 P.M. No noise-generating construction on Sundays or national holidays."	
G10. Prior to release of "hold-on-framing" status, the developer shall comply with the following: ❑ Review the project file and obtain copies as needed of the following: ❑ Approved external residential and landscape light fixtures and locations ❑ Approved colors and materials ❑ Approved landscape plans ❑ Conditions of approval ❑ Submit photo documentation verifying that the tree protection measures are intact in accordance to the plans (photos shall reflect current conditions) ❑ Sign the approved plans indicating that the above items were	

completed and that the applicant understands that the project will be completed in accordance to the approved plans	
G11. Prior to release of "hold-on-framing" status, the developer shall submit a certification letter from a California certified land surveyor or registered civil engineer, which verifies that development complies with the approved construction drawings. At the time of form inspection, the applicant shall submit the certification letter to Contra Costa County Building Inspection Department ("CCCBID") inspector. A separate copy shall also be submitted to the Lafayette Planning Services Division. For questions about this requirement, contact CCCBID for clarification.	
G12. This Tentative Map approval will terminate two years after the date of approval of this application unless a Final Map is approved by the City, and the Final Map is recorded with the County Recorder's Office within that time period. Upon application filed before the expiration of the Tentative Map, an extension of time may be granted by the Planning Commission.	
G13. This subdivision shall conform to the provisions of the County Subdivision Ordinance (Title 9) as adopted by the City of Lafayette.	
G14. All on-site utility distribution services shall be installed underground. Conduit for cable television shall also be installed underground at the developer's expense.	
G15. Each unit constructed in the condominium project shall be subject to Park Facilities Fees, Parkland Dedication Fees (Section 6-1600 et. seq.) and Walkways Fees (Section 8-113) payable prior to issuance of a grading or building permit, whichever is first, at the rate established by City Council resolution and in effect at the time the building permit is issued.	
G16. All new impervious surfaces are subject to Section 8-700 et. seq. (Drainage Impact Fees).	
G17. Development shall be in accordance with any City and EBMUD water conservation guidelines in effect at the time of new construction.	
G18. The Final Map shall be recorded before the sale of any unit.	
G19. Site improvement work, any construction work, including set-up work, loading or unloading of materials or equipment, or the maintenance, refueling or tune-up of any equipment, either interior or exterior of the buildings, performed as part of the building of the project is restricted to the hours between 8:00 a.m. and 6:00 p.m. Work listed above shall be restricted to weekdays and is not permitted on federal holidays, Saturdays or Sundays. Violations of this condition may result in issuance of a Stop Work Order. This condition does not apply to the construction activities of public utilities. This condition does not apply to the activities of subsequent residents after the final inspection and occupancy of a home on a lot.	
G20. Restraints upon location of construction equipment and noise shall be as follows: a. Stationary equipment (e.g. compressors) shall not be located closer than 40 feet to any property line abutting adjacent residential development or	

exceed 70 dBA at 50 ft. b. Non-stationary mobile equipment shall not exceed 83 dBA at 50 ft. c. Notwithstanding the above conditions, the noise level at any property line abutting residential development shall not exceed 80 dBA.	
G21. The placement of mailboxes shall conform to current standards of the United States Postal Service. The developer is advised to contact the Postal Service to establish satisfactory arrangements for mail delivery.	
G22. The developer or subsequent lot owner shall be responsible for the prompt clean up of any materials spilled or dropped on any abutting streets during construction. The developer or subsequent lot owner shall repair any damage caused to these streets by construction vehicles associated with such construction. The City Engineer may require the developer to post a cash deposit prior to the start of construction to cause timely clean up and repair of streets.	
G23. During the construction of improvements, Mt. Diablo Boulevard and Mt. Diablo Court shall be kept open to emergency vehicle traffic at all times. Any lane closures shall require traffic control to be approved by the City Engineer in advance.	
G24. An Encroachment Permit shall be obtained from the City Engineer for any work done within the City right-of-way.	
G25. Temporary trailers are to be used only during the construction period and shall be removed upon completion of the building.	
G26. The applicant shall defend, indemnify and hold harmless the City of Lafayette, (its agents, officers and employees) from an action, or proceeding against the City that attacks or seeks to, set aside this approval, if the action or proceeding is brought within the applicable time period of Government Code Section 65009. If the City is aware of such action or proceeding it shall promptly notify the applicant and cooperate fully in the defense. If the City fails to promptly notify the applicant, or fails to cooperate fully in the defense, the applicant is not thereafter responsible to defend, indemnify or hold the City harmless. This condition does not prohibit the City from participating in the defense of the action, or proceeding, if both of the following occur: (1) the City bears its own attorney's fees and costs; and (2) the City defends the action in good faith. In this condition "applicant" means each person who qualifies as an applicant as that term is defined in L.M.C. sections 6-203.	
G27. These conditions of Project Approval include certain fees, dedication requirements, reservation requirements, and other exactions. Under Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees and a description of the dedication, reservations, and other exactions which are imposed upon you. Under Government Code Sections 66020(a) & (d)(1), there is a 90-day period within which you may file and administrative protest of these fees, dedications, reservations, and other exactions. This 90-day period begins with the approval of the project. If you fail to file a protest with the City Clerk within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exaction.	
G28. The project shall comply with Chapter 5-6, Construction and Demolition Debris Recycling. Prior to issuance of a grading, building or demolition	

permit, whichever occurs first, the builder shall submit a waste management plan to the Planning Services Division for review and approval. The approved waste management plan shall be duplicated in the construction documents.	
G29. Prior to release of "Hold-On-Final" status and final building inspection, the applicant shall comply with Chapter 5-6, Construction and Demolition Debris Recycling, including submittal of a waste assessment summary report to the Planning Services Division. All construction and demolition debris generated by the project must be accounted for. Regardless of the project completion schedule, an in-progress summary report with documenting receipts must be submitted by January 31st of each year for the prior calendar year.	
G30. Prior to filing the Final Map, the developer shall provide City with proof that an agreement has been executed with each utility company and that all appropriate fees and/or bonds have been paid as required by the agreement.	
G31. Prior to release of "hold-on-final" status and final building inspection the developer shall install approved landscaping according to the approved landscape plans prior to contacting the Lafayette Planning Services Division to schedule an inspection. Species identification tags shall remain on trees, plants, and shrubs.	
G32. Prior to release of "hold-on-final" status and final building inspection the developer shall contact the Lafayette Planning Services Division at least 72 hours prior to requesting a final building inspection from the Contra Costa County Building Inspection Department. The applicant shall request an inspection of the project by Planning Services Division staff to confirm that all conditions of approval have been met and that the project was constructed in accordance with approved plans. Planning Services Division staff will release the "Hold" on the final building inspection when all conditions of approval have been met and a site inspection finds that the project was constructed in accordance with approved plans, including but not limited to siting, grading, retaining walls, tree protection measures, location of windows & doors, and building color.	

DESIGN		FOR STAFF USE ONLY
D1	All heating, ventilation and cooling (HVAC) units shall be concealed when viewed from other properties.	
D2	Median & Pocket Park and Sidewalk Design Review – within 60-days of approval of the General Plan Amendment and re-zoning, the developer shall submit a design for landscaped medians in Mt. Diablo Boulevard, street lighting, sidewalk and improvements to the pocket park for review and approval by the Design Review Commission, Downtown Street Improvement Master Plan Implementation Committee, the Park Improvement Advisory Group, and the Parks, Trails and Recreation Commission, as appropriate. The hold-on-framing inspection shall not be released until review of the plans is complete.	

D3	Prior to issuance of a building permit, the applicant shall submit to the Planning Services Division cut sheets and actual material samples for review by the Design Review Commission. The matter will be placed on the consent calendar of the Design Review Commission with a Notice of Public Hearing sent to each property owner within 300-ft. of the subject property at least 10-days prior to the meeting, thus allowing review and comments from the neighbors. Roofing materials for the flat portion of the roof shall be neutral color and non-reflective.	

	STREETS & TRAFFIC	FOR STAFF USE ONLY
S1	Prior to release of the hold on final inspection, the developer shall provide evidence to the Lafayette Planning Services Division that a homeowners association or similar entity shall be established in an enforceable recorded document for all units in the condominium complex. Said agreement shall require that all property owners be responsible for maintaining the common private property, driveway, private drainage system, retaining walls and other improvements on the property.	
S2	Prior to filing the Final Map, improvement plans shall be submitted to the City Engineer showing all improvements including road, drainage, and utility improvements required by this approval. Plans shall be prepared by a registered civil engineer and shall be subject to review and approval by the City Engineer. All improvements shown on the approved tentative map shall be installed by or at the expense of the developer.	
S3	The subdivider shall execute a subdivision agreement with the City prior to filing the Final Map, agreeing to install all required improvements within one year of the map being filed. The agreement shall be backed by a bond or other security acceptable to the City.	
S4	Any cost of relocating utilities due to subdivision improvements shall be the responsibility of the subdivider.	
S5	Prior to filing the Final Map, developer shall provide City with (a) a reproducible mylar copy, (b) a scanned electronic file in TIFF format, and (c) an electronic file in AutoCAD or Microstation compatible format, of the approved Improvement Plans. Within 30 days after recording the Parcel/Final Map, the subdivider shall provide the City with (a) a reproducible mylar copy and (b) a scanned electronic file in TIFF format, of the recorded Parcel/Final Map.	
S6	Prior to issuance of a grading permit or filing of the Final Map, the developer shall respond to the comments in the Circulation Commission memoranda dated November 29, 2006 and January 18, 2007. The developer shall provide written documentation from Circulation Commission staff to Planning Services Division staff that all of the comments have been adequately addressed.	
S7	Prior to issuance of a grading permit or filing of the Final Map, the developer shall respond to the Circulation Commission staff's comments in table labeled "Circulation Commission Comments on the Lafayette Park Terrace Condominium Project"	

S8	Prior to issuance of a grading permit or filing of the Final Map, the developer shall respond to the comments from Consulting Traffic Engineer Chuck DeLeuw in his memorandum dated September 12, 2006 with the exception of Transportation Study Comment #2 regarding increasing trip generation rate (the Circulation Commission did not support this comment).	
S9	All truck staging for the project shall be pursuant to the approved staging plan. There shall be no queuing of trucks within travel lanes on Mt. Diablo Boulevard or Mt. Diablo Court.	

DRAINAGE		FOR STAFF USE ONLY
DR1	Private drainage easements shall be shown on the map as needed.	
DR2	Stormwater – A stormwater control plan shall be submitted to the City Engineer for review and approval. The plan shall indicate the location and design of all storm drainage facilities, including subsurface drains, detention basins, and drop structures. Detention basins, if determined to be necessary by the City Engineer, shall be constructed in conjunction with grading for the development.	
DR3	Stormwater - Direct roof drainage across non-paved areas prior to entering the storm drain system or natural waterway. Path of drainage shall incorporate erosion control measures as necessary.	
DR4	Stormwater - Prior to issuance of a grading permit or filing of the Final Map, grading and improvement plans shall include stormwater pollution prevention plans for use during site development and building construction to mitigate impacts of this development. Plans shall include measures contained in the City's "Construction Practices for Stormwater Pollution Prevention" document available from the Planning Services Division or at www.lovelafayette.org > City Departments > Public Works > Construction Practices for Stormwater Pollution Prevention.	
DR5	Stormwater – The application was deemed complete subsequent to February 15, 2005, will create more than one acre of impervious surface and is therefore subject to the provisions of the Contra Costa Clean Water Program NPDES permit C.3 requirements. Prior to issuance of a grading permit or filing of the Final Map, the applicant shall submit to the City Engineer for review and approval a Stormwater Control Plan complying with the Stormwater C.3 Guidebook available at: www.cccleanwater.org/construction/nd.php	
DR6	Stormwater - Grading and/or improvement plans shall be consistent with the approved Stormwater Control Plan and shall include drawings and specifications necessary to implement all measures in the approved Plan. Plans shall include a completed "Construction Plan C.3 Checklist" as described in Step 10 of the Stormwater C.3 Guidebook available at www.cccleanwater.org/construction/nd.php.	
DR7	Stormwater – Concurrent with submittal of grading and/or improvement plans, the applicant shall submit a draft City of Lafayette Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry to the Engineering Services Division for review and approval. A sample Agreement is available from the Planning Services Division or	

	from www.lovelafayette.org > City Departments > Public Works > Appendix A – Stormwater Facilities Operations and Maintenance Agreement.	
DR8	Stormwater - Prior to filing the Final Map, the applicant shall submit the final City of Lafayette Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry to the Engineering Services Division for review and approval.	
DR9	Stormwater - Prior to the sale of any unit or prior to final building inspection, whichever occurs first, the applicant shall execute any agreements identified in the Stormwater Control Plan that pertain to the transfer of ownership and/or long-term maintenance of stormwater treatment or hydrograph modification BMPs. Post construction stormwater pollution prevention guidelines, approved by the City, shall be given to new owners prior to the transfer of any property.	
DR10	Stormwater - All stormwater management facilities, including but not limited to, treatment best management practices ("BMPs"), permanent source control BMPs, detention basins, and drop structures, shall be installed and shall be inspected and certified by the project engineer.	
DR11	Each unit is subject to an annual stormwater utility fee as set by the City Council.	
DR12	Stormwater - "No dumping drains to bay" markings per City requirements shall be installed at each stormwater drain inlet.	

GRADING		FOR STAFF USE ONLY
GR1	A grading permit will be required for the earthwork necessary to develop the Project. The grading shall follow the recommendations contained in the *Geotechnical Exploration for Lafayette Park Terrace,* prepared by EnGeo Geotechnical & Environmental Consultants, dated July 24, 2006.	
GR2	Developer shall submit a stormwater pollution prevention plan (including erosion control plan) prior to obtaining the Grading Permit required by Condition GR1.	
GR3	Grading operations shall be scheduled only between April 15 and October 1 to avoid the Fall and Winter rains. At the developer's risk, grading may begin as early as March 15 and continue past October 1, only if the stormwater pollution prevention measures have been installed and certified as operational by the Project Engineer and the Contra Costa County Grading Inspector.	
GR4	During the grading operation the applicant shall control the generation of dust by fully sprinkling the site as determined to be needed by the County Grading Inspector in accordance with the County Grading Ordinance.	
GR5	If archeological materials are uncovered during grading, trenching or other excavation, earthwork within 100 feet of these materials shall be stopped until a professional archaeologist who is certified by the SOA and/or SOPA has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures, if deemed necessary.	
GR6	Stormwater –The project will disturb more than one (1) acre of land. Prior to issuance of a grading, building or demolition permit, whichever occurs first, the applicant shall submit to the City of Lafayette a copy of the Notice of	

	Intent (NOI) sent to the State Water Resources Control Board and the Stormwater Pollution Prevention Plan (SWPPP) prepared for the project, as required by the State's General Construction Activity Permit. The SWPPP shall contain and the applicant shall implement, at a minimum, the measures contained in the City of Lafayette "Minimum Construction Site Management Practices". Additional information on the NOI process and application forms can be obtained through the State website: http://www.swrcb.ca.gov/stormwtr/docs/finalconstpermit120602.doc.	

	LANDSCAPING	FOR STAFF USE ONLY
L1	All trees indicated for retention on the approved plan shall be protected during construction by the measures outlined in the Basic Tree Preservations Guidelines, available on the City web site or at the Planning Division.	
L2	Any of the trees indicated for retention, that die as a result of construction or grading, shall be replaced by new trees at a ratio of 3 trees per 6" of diameter, of a size, species and location acceptable to the City Landscape Architect; trees shall be 15 gallon or larger. (e.g. if a 12" tree is damaged and dies as a result of construction activities, 6 replacement trees shall be requires.)	
L3	Prior to the issuance of a Building Permit for the Project, the owner shall enter into a landscape maintenance agreement with the City assuring the long-term maintenance of the required landscape plan, as well as the existing trees.	
L4	Prior to the issuance of a Building Permit for the Project, the applicant shall revise the landscape plan or otherwise demonstrate the location of trees and their size at planting for review by Planning Commissioner Ateljevich and Design Review Commissioner Cleaver. On May 15, 2008 the applicant indicated a willingness to increase the size of an unspecified number of trees to provide more immediate screening at planting, in accordance with §6-1710 LMC, Tree Protection.	

	FIRE	FOR STAFF USE ONLY
F1	The developer shall provide an adequate and reliable water supply for fire protection with a minimum fire flow of 1,000 GPM. Required flow shall be delivered from not more than one hydrant flowing while maintaining 20 pounds residual pressure in the main.	
F2	The proposed access roadway widths are acceptable provided they have not less than 20'-0" and 13' 6" vertical clearance, and are capable of supporting twenty (20) tons. Access roads of 20 feet or less of unobstructed width shall have **No Parking** signs posted on both sides of the street.	
F3	All weather access roads shall be installed and in-service prior to combustible construction.	
F4	Approved premises identification shall be provided. Such numbers shall contrast with their background and be readily visible from the street.	
F5	The developer shall provide roof coverings with a minimum Class A rating. Untreated wood shake or shingles are not allowed.	

F6	The Project shall be provided with a Fire District approved automatic sprinkler system.	
F7	Prior to issuance of a building permit, the developer shall submit two (2) sets of construction drawings to the Contra Costa County Fire Protection District for review and approval to ensure that the project meets with all applicable rules, regulations and codes.	
F8	The developer shall comply with all requirements set forth in the July 10, 2008 letter from the Contra Costa County Fire Protection District.	

SANITARY		FOR STAFF USE ONLY
SAN1	The developer shall submit any construction plans involving work on the public sanitary sewer system in to the Contra Costa Central Sanitary District for review and approval before the issuance of a building permit.	
SAN2	The sanitary sewers shall be gravity flow unless it is determined by the Contra Costa Central Sanitary District that gravity flow is infeasible, in which case pumping may be allowed.	

MITIGATION MEASURES In addition to the conditions of approval listed above, the following mitigations are part of the Mitigated Negative Declaration of Environmental Impacts and are hereby incorporated into the conditions of approval	FOR STAFF USE ONLY
Mitigation #1: The Project will be reviewed by the Design Review Commission and Planning Commission prior to consideration by the City Council.	
Mitigation #2: The City will require provisions in construction plans, documents and contracts that all activities comply with BAAQMD's rules for construction, including the watering of the site and cleaning of demolition and grading equipment on a daily basis.	
Mitigation #3: The City will require provisions in construction documents and contracts that all construction equipment is maintained and tuned to reduce pollutant emissions.	
Mitigation #4: The City will require in construction documents and contracts that off-site construction activities are scheduled to avoid peak traffic times.	
Mitigation #5: The City will require in construction plans, documents and contracts that all construction materials are low-emission as much as practicable.	
Mitigation #6: The City will review detailed development plans to ensure that the Project includes design features to encourage alternative transportation, such as bicycle racks and improved pedestrian facilities.	
Mitigation #7: The City will require in all approvals that the development complies with Title 24 and other County and City requirements for energy efficiency.	
Mitigation #8: The Project will incorporate the recommendations in the letter dated August 9, 2006 prepared by the City's landscape consultant InsideOut Design.	
Mitigation #9: The Project will incorporate the recommendations in the January 29, 2006 project arborist report prepared by Joseph McNeil Consulting Arborist	
Mitigation #10: The Project will be reviewed by the Design Review Commission and	

the Planning Commission prior to consideration by the City Council.	
Mitigation # 11: In the event an archaeological resource is discovered during demolition and/or construction, the City will require all contractors to stop work immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.	
Mitigation #12: In the event a unique paleontological resource or site is discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.	
Mitigation #13: In the event human remains are discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.	
Mitigation #14: The Project will comply with the recommendations outlined in the Geotechnical Exploration, Lafayette Park Terrace, prepared by EnGeo Geotechnical & Environmental Consultants, July 24, 2006.	
Mitigation #15: The Project will comply with the Contra Costa Clean Water Program requirements and will submit a Storm Water Management Plan to ensure ongoing mitigation from project storm water runoff in compliance with C.3 regulations.	
Mitigation #16: The City will require the developer to obtain all necessary permits and follow all applicable rules and regulations with respect to the demolition of a single-family residence that contains hazardous materials and construction of the condominium building.	
Mitigation #17: The Project will receive all necessary permits from the San Francisco Bay Region Regional Water Quality Board prior to the issuance of a building, grading or demolition permit.	
Mitigation #18: The developer shall be required to submit to the City Engineer for review and approval a Stormwater Control Plan complying with the Stormwater C.3 Guidebook available at www.cccleanwater.org	
Mitigation #19: The City will require the applicant to demonstrate that adequate noise insulation measures are incorporated into the design to mitigate interior noise levels to appropriate levels.	
Mitigation #20: The applicant will limit construction activities to Mondays through Fridays from the hours of 8:00 am to6:00 pm. Construction will not be allowed later than these hours and/or on Saturdays, Sundays or federal holidays unless prior approval is granted by the City after consultation with adjacent uses.	
Mitigation #21: The City will require provisions in construction plans, documents and contracts that all construction equipment is fitted with exhaust muffling and noise control filter devices.	
Mitigation #22: The developer shall be required to contribute Parkland Dedication and Park Facilities Fees, as adopted by City Council Ordinance and in effect at the time a building permit is issued, to be used to purchase new or improve existing parks and recreation facilities.	
Mitigation #23: The developer shall be required to contribute toward improvements to a pocket park at Mt. Diablo Boulevard & Mt. Diablo Court. The design and Improvement plans shall be reviewed and approved by the Design Review Commission, Downtown Street Improvement Master Plan Implementation	

Committee, Park Improvement Advisory Group, Parks, Trails and Recreation Commission, and the City Engineer	
Mitigation #24: The developer shall make an irrevocable offer of dedication for a non-exclusive 10-ft. wide easement along the northern property line for a future pedestrian/bicycle linkage from Mt. Diablo Court to Pleasant Hill Road.	
Mitigation #25: The developer shall contribute monies toward the construction of a new 5-ft. concrete sidewalk over the easement outlined in Mitigation #24 above.	
Mitigation #26: The developer shall make a contribution toward the installation of a three-way traffic signal, per City of Lafayette standard, at Mt. Diablo Boulevard & Mt. Diablo Court	
Mitigation #27: The City Engineer shall review the project plans for conformance with the Contra Costa County Clean Water Program's storm water management plan best management practices which call for dissipation and infiltration on site to the maximum extent practicable.	

City of Lafayette Staff Report

For:	City Council
By:	Greg Wolff, Senior Planner
Date Written:	October 6, 2008
Meeting Date:	October 14, 2008
Project:	**GP01-05 / RZ01-05 BRUCE TORQUEMADA, LAFAYETTE PROPERTIES, (APPLICANT & OWNER), R-15 ZONING:** Lafayette Park Terrace – Proposed ~~20-Unit~~ 18-Unit Condominium Project at 3235 Mt. Diablo Court, a 2-acre site at the terminus of Mt. Diablo Court. APNs: 233-131-020 & 022

STATUS
The City Council last considered this project on September 22, 2008. The applicant presented revised plans submitted September 8, 2008 showing relocation of the three units along the west edge of the project (two units were eliminated altogether, the third was relocated to the east side). The west wall of the building was pulled back an additional 20-feet along the shared property line with Lafayette Pointe and the entirety of the building was dropped one foot further into the ground.

LETTER FROM KATHY SKOVGARD & RANDY CASTRO WITH 9 REQUESTS
Kathy Skovgard, on behalf of the residents of Lafayette Pointe and Randy Castro, President, Pleasant Hills and Valleys Homeowners Association submitted a letter the day of the meeting with nine requests listed below. The applicant agreed to all items with the exception of lowering the building by an additional two feet. A compromise was reached between the applicant, the neighbors and the City Council and the building will be lowered one additional foot beyond the one foot lowering shown in the September 8, 2008 plans. The nine items from the Skovgard / Castro letter were:

1) Please add a Condition of Approval to allow the nearby residents immediately to the east, south and north to be included in any discussions and decisions regarding the landscaping as it impacts their properties;
Staff Comment: The landscape plan is part of the set of drawings considered by the City Council. The project architect has stated that he would be happy to have the project landscape architect to meet with the neighbors in the field when plants are delivered to the site to fine tune their placement for privacy / views. The landscape plan will be part of the approved plans and significant deviation from the approved plan will require review & approval by the City of Lafayette. No additional condition of approval has been drafted.

2) Please include in the process and ensure that notice is given to the residents of Lafayette Pointe regarding the final placement and use of the pocket park near Mt. Diablo Boulevard;
Staff Comment: The conditions of approval require review and approval of the design of the pocket park by the Design Review Commission and Parks, Trails & Recreation Commission, amongst

others. Public notification will occur beforehand and public meetings will provide for neighbor input on the design.

3) Please include in the process and ensure that notice is given to the surrounding residents regarding any progress pertaining to the pathway from Mt. Diablo Court to Pleasant Hill Road;
Staff Comment: If and when the continuation of the pathway east of the subject property is at the design stage, the matter will be considered by the Circulation Commission and public notification will be provided by mail and A-frame signs.

4) Please require public review with the appropriate City agency of the new proposed signal light, its timing and crosswalk once the signal light is installed and operational at Mt. Diablo Boulevard and Mt. Diablo Court (see discussion below);
Staff Comment: The City Engineer and Circulation Commission can review the signal timing and operation of any traffic signal in Lafayette at any time. The City Engineer will ensure that the signal at Mt. Diablo Boulevard and Mt. Diablo Court is appropriately designed and correctly installed. No additional review is necessary after installation of the signal.

5) Please provide for review by the property owners to the immediate west and south of the building of the proposed final roofing materials and colors;
Staff Comment: The conditions of approval stipulate that the roofing materials shall be neutral color and non-reflective and require review and approval by the Design Review Commission. The matter will be placed on the consent calendar of the Design Review Commission with a Notice of Public Hearing sent to each property owner within 300-ft. of the subject property at least 10-days prior to the meeting, thus allowing review and comments from the neighbors. See condition of approval D3.

6) Please eliminate the outside patio on the southwest corner of the building;
Staff Comment: The applicant agreed to eliminate the common area patio at the southwest corner of the building. The conditions of approval require the construction drawings to show not this patio. Please see condition of approval G1(c).

7) Please add a Condition of Approval requiring a non-obtrusive security fence around the property to prevent trespassing to and from adjacent properties;
Staff Comment: If a property owner is concerned about trespassers, they have the right to put up a fence on their own property or in conjunction with the neighbor. No fencing is shown as part of the proposed or approved plans. The applicant offered to explore installation of a fence with the neighbors. If the applicant desires to install a fence as part of the project, it requires public notification and review by the Design Review Commission. Please see condition of approval G1(b).

8) Please require clarification of the fence along the eastern border –a fence that does not show on any of the available plans-- so as to provide possible mitigation of its impact on the adjacent property owners;
Staff Comment: Please see response to #7 above.

9) Finally, and most importantly, please have the applicant reduce the height of the building by another two feet (see discussion below);
Staff Comment: The applicant agreed to lower the building, by further excavation, one additional foot beyond the one foot lowering shown in the September 8, 2008 plans. The conditions of

approval require the construction drawings to show the additional one foot lowering of the building. Please see condition of approval G1(a).

RECOMMENDATION

(1) Adopt City Council Resolution 2008-035 adopting the Mitigated Negative Declaration and approving the Project subject to conditions;
(2) Waive second reading and adopt Ordinance 580 approving the Rezoning and the Development Agreement.

ATTACHMENTS

1. City Council Resolution 2008-035
2. Ordinance 580
3. Conditions of Approval
4. Mitigated Negative Declaration
5. Development Agreement

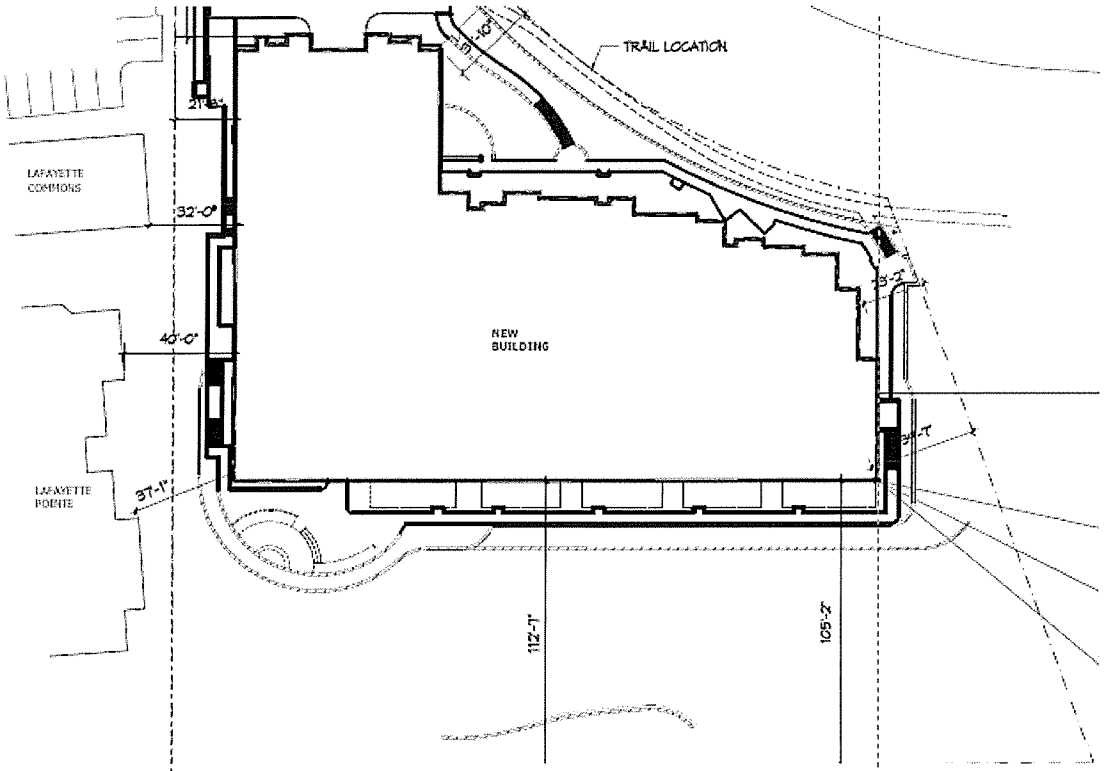

Fig. 1. Excerpt from Sheet A-1 • Plans for July 18, 2008 Council Meeting

←Reference lines by staff.

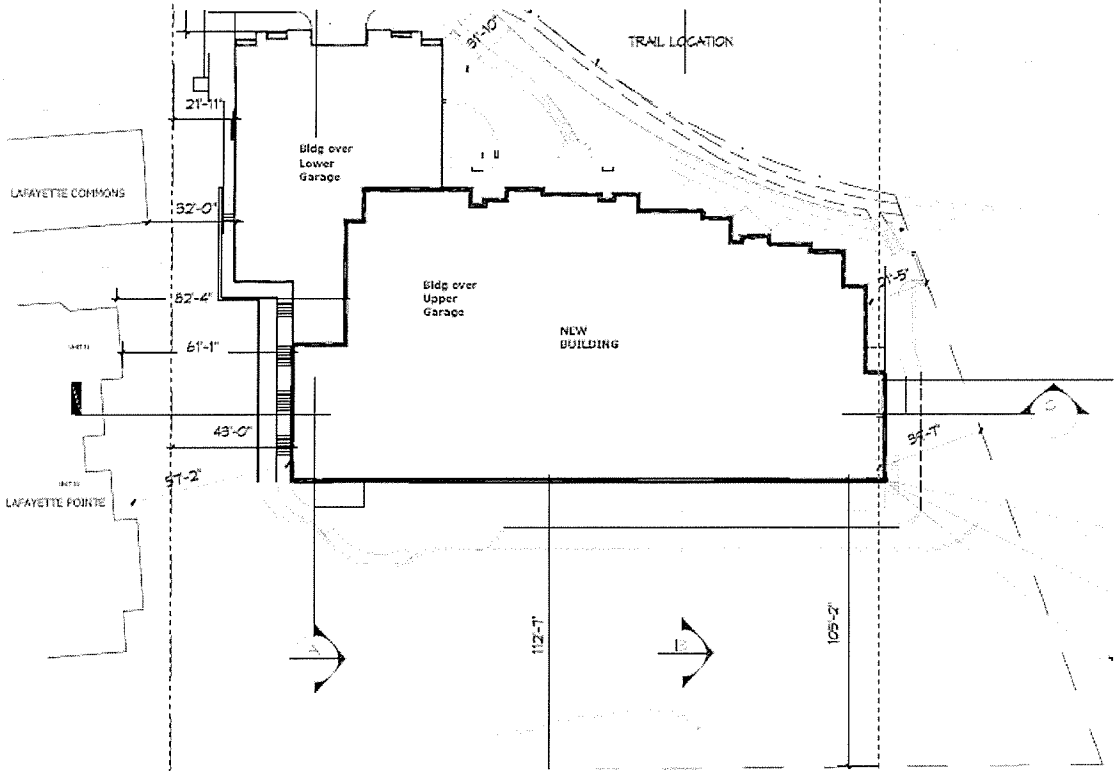

Fig. 12 Excerpt from Sheet A-1 • Plans for September 22, 2008 Council Meeting

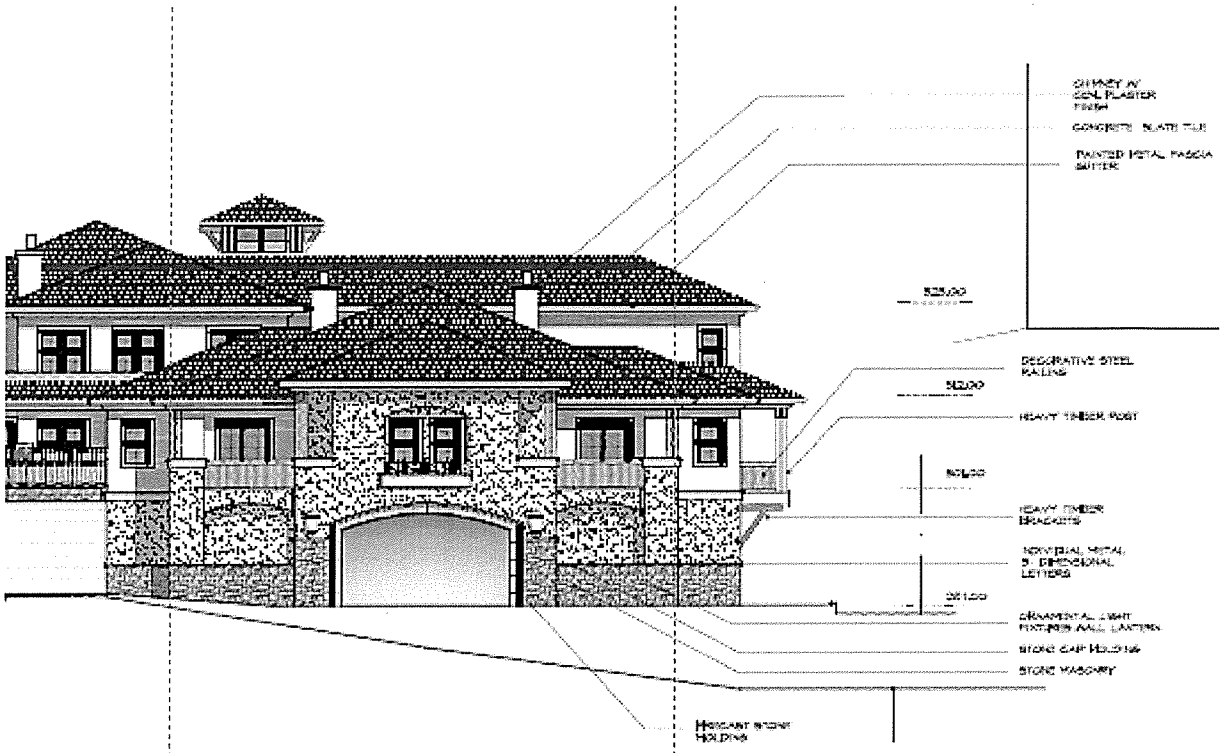

Fig. 1. Excerpt from Sheet A-6 • Plans for July 18, 2008 Council Meeting

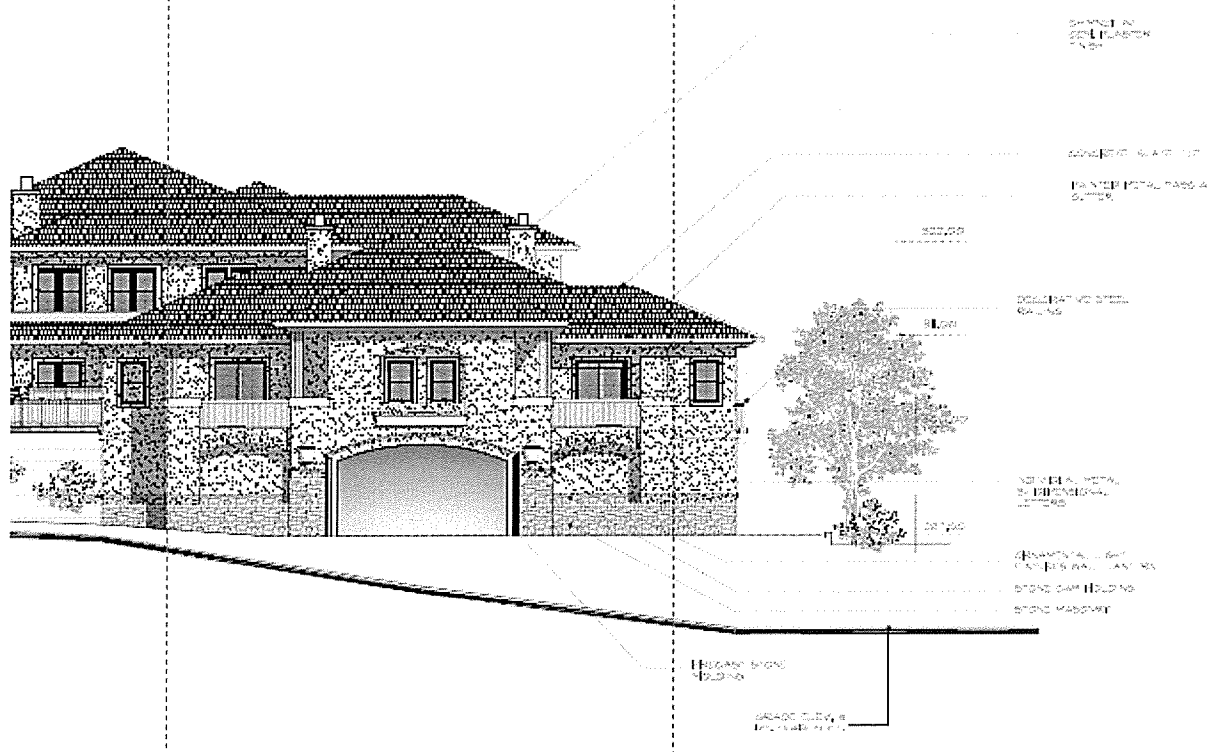

Fig. 12 Excerpt from Sheet A-6 • Plans for September 22, 2008 Council Meeting

CITY OF LAFAYETTE

MITIGATED NEGATIVE DECLARATION

Project Action(s) and Brief Description of the Project:

GP01-05 / RZ01-05 BRUCE TORQUEMADA, LAFAYETTE PROPERTIES, (APPLICANT AND OWNER), R-15 ZONING: Request for:

(1) General Plan Amendment to change the land use designation from Medium Density Single-Family Residential (up to 6 dwelling units per acre) to Low Density Multiply-Family Residential (up to 17 dwelling units per acres) and to allow a residential building up to 41-ft. high;
(2) Rezoning the subject property from Single-Family Residential District 15 (R-15) to Multiple-Family Residential District-A (MRA);
(3) Vesting Tentative Map to create 18 condominiums and common area; and
(4) Design Review approval of the project including the approximately 32,000 sq.ft. residential condominium building with approximately 20,000 sq.ft. underground parking garage
(5) Tree Permit to remove protected trees associated with the development project
(6) Grading Permit to grade an estimated 20,000 cubic yards of earth
(7) Development Agreement including off-site improvements and requirement for affordable housing

The Project site is comprised of two parcels totaling approximately 2.0 acres. The 0.4-acre northern parcel currently houses a single-family residence. The 1.6-acre southern parcel is currently vacant. The existing single-family residence will be removed as part of the Project.

The proposed 20-unit condominium Project will consist of a single building with two floors of condominiums over a parking garage (exposed at the front, underground in the back). Fifty-one parking spaces will be provided. Construction of the Project is anticipated to break ground in the fall of 2008.

Location:

The project is located on ~2.0 acres at 3235 Mt. Diablo Court on the south side of Mt. Diablo Boulevard. The Eastbound State Route 24 Pleasant Hill Road off-ramp bounds the site on the north.
Assessor's Parcel Numbers: 233-131-020 & 022

Finding:

The Design Review Commission of the City of Lafayette, having reviewed the Initial Study of this proposed project and having reviewed the written comments received prior to the public meeting of the Design Review Commission, including the recommendation of City staff, does hereby find and declare that the proposed project could have a significant effect on the environment. However, mitigation measures described below have been incorporated into the project or recommended as conditions of project approval, mitigating to less than a significant level the potential adverse environment effect of this project action.

Mitigation Measures:

Mitigation #1: The Project will be reviewed by the Design Review Commission and Planning Commission prior to consideration by the City Council.

Mitigation #2: The City will require provisions in construction plans, documents and contracts that all activities comply with BAAQMD's rules for construction, including the watering of the site and cleaning of demolition and grading equipment on a daily basis.

Mitigation #3: The City will require provisions in construction documents and contracts that all construction equipment is maintained and tuned to reduce pollutant emissions.

Mitigation #4: The City will require in construction documents and contracts that off-site construction activities are scheduled to avoid peak traffic times.

Mitigation #5: The City will require in construction plans, documents and contracts that all construction materials are low-emission as much as practicable.

Mitigation #6: The City will review detailed development plans to ensure that the Project includes design features to encourage alternative transportation, such as bicycle racks and improved pedestrian facilities.

Mitigation #7: The City will require in all approvals that the development complies with Title 24 and other County and City requirements for energy efficiency.

Mitigation #8: The Project will incorporate the recommendations in the letter dated August 9, 2006 prepared by the City's landscape consultant InsideOut Design.

Mitigation #9: The Project will incorporate the recommendations in the January 29, 2006 project arborist report prepared by Joseph McNeil Consulting Arborist

Mitigation #10: The Project will be reviewed by the Design Review Commission and the Planning Commission prior to consideration by the City Council.

Mitigation # 11: In the event an archaeological resource is discovered during demolition and/or construction, the City will require all contractors to stop work immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.

Mitigation #12: In the event a unique paleontological resource or site is discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.

Mitigation #13: In the event human remains are discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.

Mitigation #14: The Project will comply with the recommendations outlined in the Geotechnical Exploration, Lafayette Park Terrace, prepared by EnGeo Geotechnical & Environmental Consultants, July 24, 2006.

Mitigation #15: The Project will comply with the Contra Costa Clean Water Program requirements and will submit a Storm Water Management Plan to ensure ongoing mitigation from project storm water runoff in compliance with C.3 regulations.

Mitigation #16: The City will require the developer to obtain all necessary permits and follow all applicable rules and regulations with respect to the demolition of a single-family residence that contains hazardous materials and construction of the condominium building.

Mitigation #17: The Project will receive all necessary permits from the San Francisco Bay Region Regional Water Quality Board prior to the issuance of a building, grading or demolition permit.

Mitigation #18: The developer shall be required to submit to the City Engineer for review and approval a Stormwater Control Plan complying with the Stormwater C.3 Guidebook available at www.cccleanwater.org

Mitigation #19: The City will require the applicant to demonstrate that adequate noise insulation measures are incorporated into the design to mitigate interior noise levels to appropriate levels.

Mitigation #20: The applicant will limit construction activities to Mondays through Fridays from the hours of 8:00 am to6:00 pm. Construction will not be allowed later than these hours and/or on Saturdays, Sundays or federal holidays unless prior approval is granted by the City after consultation with adjacent uses.

Mitigation #21: The City will require provisions in construction plans, documents and contracts that all construction equipment is fitted with exhaust muffling and noise control filter devices.

Mitigation #22: The developer shall be required to contribute Parkland Dedication and Park Facilities Fees, as adopted by City Council Ordinance and in effect at the time a building permit is issued, to be used to purchase new or improve existing parks and recreation facilities.

Mitigation #23: The developer shall be required to contribute toward improvements to a pocket park at Mt. Diablo Boulevard & Mt. Diablo Court. The design and Improvement plans shall be reviewed and approved by the Design Review Commission, Downtown Street Improvement Master Plan Implementation Committee, Park Improvement Advisory Group, Parks, Trails and Recreation Commission, and the City Engineer

Mitigation #24: The developer shall make an irrevocable offer of dedication for a non-exclusive 15-ft. wide easement along the northern property line for a future pedestrian/bicycle linkage from Mt. Diablo Court to Pleasant Hill Road.

Mitigation #25: The developer shall contribute monies toward the construction of a new 5-ft. concrete sidewalk over the easement outlined in Mitigation #24 above.

Mitigation #26: The developer shall make a contribution toward the installation of a three-way traffic signal, per City of Lafayette standard, at Mt. Diablo Boulevard & Mt. Diablo Court

Mitigation #27: The City Engineer shall review the project plans for conformance with the Contra Costa County Clean Water Program's storm water management plan best management practices which call for dissipation and infiltration on site to the maximum extent practicable.

The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City based its decision to adopt this Mitigated Negative Declaration is:

City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA (925) 284-1976

_____ _____

Date Greg Wolff, Senior Planner

Attachments

1. Map of Project area and site.
2. Environmental Checklist.

CITY OF LAFAYETTE

ENVIRONMENTAL CHECKLIST FORM

1. **Project title:**
   Lafayette Park Terrace

2. **Lead Agency name and address:**
   City of Lafayette
   3675 Mount Diablo Blvd., Suite 210
   Lafayette, CA 94549

3. **Contact person:**
   Greg Wolff, Senior Planner
   Tel. (925) 299-3204 • email: gwolff@ci.lafayette.ca.us

4. **Project location:**
   The project is located on ~2.0 acres at 3235 Mt. Diablo Court on the south side of Mt. Diablo Boulevard. The Eastbound State Route 24 Pleasant Hill Road off-ramp bounds the site on the north. Assessor's Parcel Numbers: 233-131-020 & 022

5. **Project sponsors' names and addresses:**

   Applicant & Owner
   H. Bruce Torquemada
   Lafayette Properties, LLC
   6654 Knoll Center Parkway #185
   Pleasanton, CA 94566
   Tel. (925) 249-2712

   Civil Engineer
   Mike Milani
   Milani & Associates
   4071 Port Chicago Highway, Suite 100
   Concord, CA 94520
   Tel. (925) 260-4447

   Architect
   Joe Bologna
   Hollman - Bologna, Arch. & Planning, Inc.
   1415 Oakland Blvd., Ste 103
   Walnut Creek, CA 94596
   Tel. (925) 930-7575

   Legal Counsel
   Allan Moore
   Gagen, McCoy, McMahon & Armstrong
   279 Front Street
   Danville, CA 94526
   Tel. (925) 837-0585

   Landscape Architect
   Terrence Camp
   Camp & Camp Associates
   35 Quail Court, Suite 200
   Walnut Creek, CA 94596
   Tel. (925) 941-6488

   Geotechnical Engineer
   ENGEO, Inc.
   2010 Crow Canyon Place, Ste. 250
   San Ramon, CA 94583-4634
   Tel. (925) 866-9000

6. **General Plan Designation:**
   Existing: Medium Density Single-Family Residential (up to 6 dwelling units per acre)
   Proposed: Low Density Multiply-Family Residential (up to 17 dwelling units per acre) and an amendment to allow a building up to 43-ft. in height.

7. **Zoning:**
   Existing: Single-Family Residential District 15 (R-15)
   Proposed: Multiple-family Residential District A (MRA)

8. **Description of the Project:**
The Project site is comprised of two parcels totaling approximately 2.0 acres. The 0.4-acre northern parcel is developed with a single-family residence. The 1.6-acre southern parcel is vacant. The existing single-family residence will be removed as part of the Project.

The proposed 20-unit condominium Project will consist of a two-story building with a 21,000 sq.ft. parking garage beneath two floors of condominiums totaling 33,500 sq.ft. Fifty one parking spaces will be provided. Construction of the Project is anticipated to begin in fall 2008.

NOTE: The project sponsor reduced the scope of the project from 20 units to 18 units and reduced the overall height from 43-ft. to 41-ft. in September 2008. Since this Initial Study analyzes the impacts of a larger, taller project, the impacts from the smaller project would be the same or less. This Initial Study has not been revised to reflect the fewer units and lower building height.

9. **Surrounding land uses and setting:**
The Project is surrounded by multiple-family residential apartments and condominiums to the west, Mt. Diablo Court and Highway 24 off-ramp right-of-way to the north, and single-family residences to the east and south. The Project is adjacent to the Lafayette Redevelopment Project Area, however the Project is not proposed to be incorporated into the Redevelopment Project Area. The northern third of the site is relatively level and has an existing single-family residence. The southern two-thirds of the site is vacant and slopes up from north to south with an average slope of approximately 28%.

The Project is located at the terminus of Mt. Diablo Court, which has a mixture of office and retail uses fronting Mt. Diablo Boulevard with multiple-family residential uses (apartments and condominiums) further to the south on Mt. Diablo Court.

The arborist report analyzes fifty three trees on the site. Twenty five trees not native to Lafayette are proposed for removal. The majority of trees proposed for removal are Coast Redwoods which straddle the property line between the two parcels. Most of the trees at the perimeter of the site will be retained. Those that are removed are proposed to be replaced with new screening trees which are native to Lafayette.

10. **Other public agencies whose approval is required:**
None.

11. **Previous Environmental Review:**
The Lafayette General Plan ("GP") was adopted in October 2002 after the Final Environmental Impact Report ("GP FEIR") was certified by the City Council. The GP FEIR analyzed the development of the community as envisioned in the GP and determined that all impacts could be mitigated to less than significant levels. The GP EIR is considered a program EIR and a first-tier of analysis for the Project.

The proposed development of 20 condominiums on the existing two lots of record represents an increase of density from a potential of 10 dwelling units to 20 dwelling units (2 acres = 87,120 sq.ft. x 1DU/15,000 sq.ft. = 5.8 DU or five primary residences and five secondary dwelling units). This Initial Study analyzes impacts that could result from the Project.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:
None of the following environmental factors would be potentially affected by this project, since there is no impact that is a "Potentially Significant Impact" as documented by the checklist on the following pages.

■ Aesthetics	■ Agricultural Resources
■ Air Quality	■ Biological Resources
■ Cultural Resources	■ Geology / Soils
■ Hazards / Hazardous Materials	■ Hydrology / Water Quality
■ Land Use / Planning	■ Mineral Resources
■ Noise	■ Population / Housing
■ Public Services	■ Recreation

■ Transportation / Traffic ■ Utility / Service Systems
■ Mandatory Findings of Significance

DETERMINATION:

On the basis of this initial evaluation:

___ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

_■_ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

___ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

___ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

___ I find that although the proposed project could have a significant effect on the environment, because all potentially significantly effects 1) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and 2) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____ _____

Signature Date

Greg Wolff, Senior Planner

Printed Name

ENVIRONMENTAL IMPACTS:

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
I. AESTHETICS – Would the project:				
a. Have a substantial adverse effect on a scenic vista? *The Project is located on an infill site in an urbanized area on a court accessed via a 4-5 lane major arterial – Mt. Diablo Boulevard. There are no significant scenic resources in the vicinity of this site and the site is not identified as having high scenic value. The Project is not within the Hillside Overlay District.* *Since the Project includes the following design features, the blockage of views will be minimized to a less than significant level:* 1. *The building has been sited at the lower and less visible portion of the lot.* 2. *The height of the structures has been designed so that the highest roof ridge is below the floor elevation of neighboring properties to the south and west, thus assuring that views to the open hillsides to the north and Mt. Diablo to the east will not be blocked.* 3. *The site is well screened from off site vantage points by existing vegetation that will remain. The applicant has installed story poles illustrating the height, bulk and mass of the building and staff's photos of the story poles from off site vantage points are part of the record.* *Supporting sources: 1, 2, 3, 7, 16, 17, 18, 19*			■	
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings, within a state scenic highway? *State Route 24 is part of the* Scenic Highway System, *as stated in section 263.3 of the California State Highway Code. The Project site is approximately 600-ft. south of and 10-to-90-ft. lower than the SR24 eastbound travel lanes. The site cannot be seen from any SR24 travel lanes because of vegetative screening, but does have some visibility from the eastbound Pleasant Hill Road off-ramp.* *The site does not have scenic resources in the form of rock outcroppings or historic buildings. The existing single-family residence, built in 1957 does not have scenic or historic value and is proposed for demolition.* *The arborist report analyzes fifty three trees on the site. Twenty five trees not native to Lafayette are proposed for*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
removal. The majority of trees proposed for removal are Coast Redwoods which straddle the property line between the two parcels. Most of the trees at the perimeter of the site will be retained. Those that are removed are proposed to be replaced with new screening trees which are native to Lafayette. *The City's landscape consultant has reviewed the proposed tree removal and landscape plan. The developer is required to plant mitigation trees or contribute in lieu fee to mitigate for the trees being removed.* *Additional mitigation:* *Mitigation #1: The Project will be reviewed by the Design Review Commission and Planning Commission prior to consideration by the City Council.* *Supporting sources: 1, 2, 3, 7, 16, 17, 18, 19, 33, 36.*				
c. Substantially degrade the existing visual character or quality of the site and its surrounding? *The Project site is currently developed with a 1950's era single-family residence, with little-to-no aesthetic value. The residence is proposed for removal and replacement with a 2-story-over-garage 20-unit condominium project. The Design Review Commission and Planning Commission will review the Project plans for compliance with the City of Lafayette's adopted Residential Design Review Guidelines. The Design Review Commission has indicated its preference for a dark material for the built-up roof, to which the developer has agreed.* *Additional mitigation:* *Mitigation #1: The Project will be reviewed by the Design Review Commission and Planning Commission prior to consideration by the City Council.* *Supporting sources: 1, 6, 7, 16, 17, 18, 19, 31, 36.*			■	
d. Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area? *The Project will replace an existing single-family residence with 20 condominiums. The development will be required to meet City standards for lighting which generally require that exterior light fixtures be of "shielded source" design (also known as 'Dark Sky') where the source of the light is shielded from view.* *Additional mitigation:* *See Mitigation #1above.* Supporting sources: 6, 7,16, 19, 36.			■	

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
II. AGRICULTURAL RESOURCES – *Would the project:*				
a. Convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? *Not applicable to the Project. There are no Prime Farmlands, Unique Farmlands or Farmlands of Statewide Importance in or near the Project area.* *Supporting sources: 1, 2, 3, 17, 18, 27.*				■
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract? *Not applicable to the Project. There is no existing zoning for agricultural use or a Williamson Act contract in or near the Project area.* *Supporting sources: 1, 2, 3, 17, 18, 27.*				■
c. Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? *Not applicable to the Project as noted in II.a and b above.* *Supporting sources: 1, 2, 3, 17, 18, 27.*				■
III. AIR QUALITY – Would the project:				
a. Conflict with or obstruct implementation of the applicable air quality plan? *The California Clean Air Act requires local air pollution control districts to prepare air quality attainment plans providing for district-wide emission reductions of five percent per year averaged over consecutive three-year periods. The Project is located in the San Francisco Air Basin and the local air quality agency is the Bay Area Air Quality Management District ("BAAQMD"). The Bay Area is a non-attainment area for ozone and suspended particulates (PM_{10}) and either attainment or unclassified for other state standards such as sulfur dioxide, carbon monoxide and nitrogen dioxide.* *BAAQMD operates a network of permanent monitoring sites throughout the Bay Area. The closest monitoring station to the project sites is located in Concord. Data from the years 1998-2001 indicate that concentrations of ozone exceeded both the state and federal standards. Concentrations of PM_{10} met the federal standard but exceeded the more stringent state standard. According to BAAQMD CEQA Guidelines, a project that contributes to carbon monoxide concentrations or that*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
generates criteria air pollutant emissions exceeding BAAQMD annual or daily thresholds would be considered to have a significant air quality impact. *To ensure the Project does not add cumulatively, even at insignificant levels, to air quality impacts resulting from the implementation of the Plan, incorporation of the following mitigation measures is recommended.* *Mitigation #2: The City will require provisions in construction plans, documents and contracts that all activities comply with BAAQMD's rules for construction, including the watering of the site and cleaning of demolition and grading equipment on a daily basis.* *Mitigation #3: The City will require provisions in construction documents and contracts that all construction equipment is maintained and tuned to reduce pollutant emissions.* *Mitigation #4: The City will require in construction documents and contracts that off-site construction activities are scheduled to avoid peak traffic times.* *Mitigation #5: The City will require in construction plans, documents and contracts that all construction materials are low-emission as much as practicable.* *Mitigation #6: The City will review detailed development plans to ensure that the Project includes design features to encourage alternative transportation, such as bicycle racks and improved pedestrian facilities.* *Mitigation #7: The City will require in all approvals that the development complies with California Title 24 and applicable County and City requirements for energy efficiency.* *Supporting sources: 1, 2, 3, 16.*				
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation? *For the reasons stated in III.a above and with the recommended mitigations, the Project will not violate any air quality standard or contribute substantially to an existing or project air quality violation.* *Supporting sources: 1, 2, 3, 16.*		■		
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
exceed quantitative thresholds for ozone precursors)? *For the reasons stated in III.a above and with the recommended mitigations, the Project will not result in a cumulatively considerable net increase of any criteria pollutant for which the Bay Area is a non-attainment area under an applicable federal or state ambient air quality standard.* *Supporting sources: 1, 2, 3, 16.*				
d. Expose sensitive receptors to substantial pollutant concentrations? *BAAQMD defines sensitive receptors as facilities where sensitive receptor population groups (children, the elderly, the ill) are likely to be located. These land uses include residences, schools, playgrounds, convalescent homes, hospitals and medical clinics. According to BAAQMD CEQA Guidelines, any project with the potential to expose sensitive receptors or the general public to substantial levels of toxic air contaminants would be deemed to have a significant impact.* *The closest sensitive receptors to the Project could be located in the apartments and condominiums adjacent to the site on the west. The project will not generate air pollution other than exhaust from tenant vehicle trips. Given the size of the Project and the number of vehicle trips identified in the Project transportation study that will be generated, the Project will not expose the sensitive receptors in the vicinity to substantial pollutant concentrations.* *Supporting sources: 1, 2, 3, 16, 18, 25*			■	
e. Create objectionable odors affecting a substantial number of people? *The City does not consider Multiple Family Residential a land use that would create objectionable odors.* *Supporting sources: 3, 7, 16, 17, 19.*				■
IV. BIOLOGICAL RESOURCES – Would the project:				
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? *There are no candidate, sensitive or special status species in or near the Project area because the site for redevelopment is in an urbanized area. The mitigation measures in the GP FEIR*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
regarding biological resources have been satisfied with these findings. *Supporting sources: 1, 2, 3, 16, 17, 18, 19.*				
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? *Not applicable to the Project. There are no creeks or other identified sensitive natural communities on or near the Project site.* *Supporting sources: 1, 2, 3, 16, 17, 18, 19.*				■
c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? *Not applicable to the Project. There are no federally protected wetlands in the Project area.* *Supporting sources: 1, 2, 3, 16, 17, 18, 19.*				■
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? *The redevelopment of the Project site will not interfere substantially with the movement of fish or wildlife. There are no creeks, riparian habitat or other migratory corridors identified on the site. The mitigation measures in the GP FEIR regarding biological resources have been satisfied with these findings.* *Supporting sources: 1, 2, 3, 17, 18*				■
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? *The existing biological resources on the Project site are the trees ad naturalized invasive grasses. The arborist report analyzes fifty three trees on the site. Twenty five trees not native to Lafayette are proposed for removal. The majority of trees proposed for removal are Coast Redwoods which straddle the property line between the two parcels. Most of the trees at*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
the perimeter of the site will be retained. Those that are removed are proposed to be replaced with new screening trees which are native to Lafayette. *The Project arborist report and the City's landscape consultant's report make recommendations regarding the trees. The mitigation measures in the GP FEIR regarding natural resources have been satisfied with these findings.* *Additional mitigations:* *Mitigation #8: The Project will incorporate the recommendations in the letter dated August 9, 2006 prepared by the City's landscape consultant InsideOut Design.* *Mitigation #9: The Project will incorporate the recommendations in the January 29, 2006 project arborist report prepared by Joseph McNeil Consulting Arborist* *Mitigation #10: The Project will be reviewed by the Design Review Commission and the Planning Commission prior to consideration by the City Council.* *Supporting sources: 1, 3, 6, 7, 18, 19, 32, 34.*				
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved, local, regional or state habitat conservation plan? *Not applicable to the Project. The Project site is infill in an urbanized area and not included in any habitat conservation plan.* *Supporting sources: 1, 2, 3, 6.*				■
V. CULTURAL RESOURCES – Would the project:				
a. Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? *Section 15064.5, Title 14, California Code of Regulations states for the purpose of CEQA, the significance of an historical resource is materially impaired when a project demolishes or materially alters in an adverse manner those physical characteristics that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources or demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources.* *No building on the project site is identified as a historic resource in the GP FEIR, or other sources, and there is no*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
evidence that the residence played a significant role in Lafayette's history. The residence does not meet the City's criteria for an historical landmark pursuant to Section 6-2111 of the Lafayette Municipal Code. *Supporting sources: 1, 2, 3, 6, 18, 21, 22, 24.*				
b. Cause a substantial adverse change in significance of an archaeological resource pursuant to §15064.5? *The lower portion of the Project site has been developed for several decades. The likelihood of undiscovered archaeological resources in this area is remote. The upper portion of the site is a moderately steep hillside with no indications of archeological resources. Archeological finds in the City of Lafayette have typically occurred in low-lying areas near creeks where native inhabitants would congregate and perform daily functions.* *The following mitigation measure and the recommendations contained in the letter from the California Historic Resources Information System, however, are recommended to require cessation of construction and consultation with a professional archaeologist if such resources were found.* *Mitigation # 11: In the event an archaeological resource is discovered during demolition and/or construction, the City will require all contractors to stop work immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.* *Supporting sources: 1, 2, 3, 6, 16, 17, 18,19, 21, 22, 24, 28.*			■	
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? *There are no unique paleontological or geologic features on the Project site. The following mitigation measure and the recommendations contained in the letter from the California Historic Resources Information System, however, are recommended to require cessation of construction and consultation with a professional archaeologist if paleontological resources were found is recommended.* *Mitigation #12: In the event a unique paleontological resource or site is discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.* *Supporting sources: 1, 2, 3, 6, 16, 17, 18, 19, 21, 22, 24, 28.*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
d. Disturb any human remains, including those interred outside of formal cemeteries? *The lower portion of the Project site has been developed for several decades. The likelihood of undiscovered archaeological resources in this area is remote. The upper portion of the site is a moderately steep hillside with no indications of archeological resources.* *The following mitigation measure and the recommendations contained in the letter from the California Historic Resources Information System, however, are recommended to require cessation of construction and consultation with a professional archaeologist if such resources were found.* *Mitigation #13: In the event human remains are discovered during demolition and/or construction, the City will require all work be stopped immediately until the City is notified and a certified archaeologist can investigate the discovery and recommend further actions prior to commencement of activities.* *Supporting sources: 1, 2, 3, 6, 18, 21, 22, 24, 28.*		■		
VI. GEOLOGY AND SOILS – Would the project:				
a. Expose people or structures to potential, substantial adverse effects, including the risk of loss, injury or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? *The site is not located within an Alquist-Priolo Earthquake Fault Zone. The possibility of a surface rupture at the Project site is remote since it is not located near an active fault zone. The nearest known active fault is the Concord-Green Valley Fault more than five miles away. The GP FEIR shows the Las Trampas Fault as approximately 1.5 miles from the Project site. However, the FEIR determined this fault does not meet the criteria of an active fault and does not identify the fault as a specific risk. The Project will be required to meet all local and state requirements for construction through the grading and building permit process to reduce any potential effects from ground rupture to an insignificant level. The mitigation measures in the GP FEIR regarding geology and soils have been satisfied with these findings.* *Additional mitigation* *Mitigation #14: The Project will comply with the*			■	

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
recommendations outlined in the Geotechnical Exploration, Lafayette Park Terrace, *prepared by EnGeo Geotechnical & Environmental Consultants, July 24, 2006.* *Supporting sources: 1, 2, 3, 10, 11, 16, 26.*				
ii. Strong seismic ground shaking? *The active faults that would most likely affect Lafayette are the Northern Calaveras, Concord-Green Valley and Hayward Faults. The Project site, like all sites within the Bay Area, is likely to be subjected to strong ground shaking due to an earthquake on these active faults during the lifetime of the Project. The project will be required to meet all local and state requirements for construction through the grading and building permit process to reduce the effects of seismic activity to an insignificant level. The mitigation measures in the GP FEIR regarding geology and soils have been satisfied with these findings.* *Additional mitigation* *See Mitigation #14 above.* *Supporting sources: 1, 2, 3, 10, 11, 16, 26.*			■	
iii. Seismic-related ground failure, including liquefaction? *The Project is located in an area that has "virtually no" liquefaction potential (*2002General Plan Map VI-1 Liquefaction Potential*). Nonetheless, the Project will be required to meet all local and state requirements for construction through the grading and building permit process to reduce the effects of seismic-related ground failure, including liquefaction, to an insignificant level. The mitigation measures in the GP FEIR regarding geology and soils have been satisfied with these findings.* *Additional mitigation* *See Mitigation #14 above.* *Supporting sources: 1, 2, 3, 10, 11, 16, 26.*				■
iv. Landslides? *The Project site is classified as being in an "area least likely to develop landslides" (2002 General Plan, Map VI-2 Landslide Hazard) The* Project Geotechnical Exploration, *prepared by EnGeo Geotechnical & Environmental Consultants, dated July 24, 2006 recommends that the cut slope above the building be supplemented with slope stabilization techniques, such as geogrid.* *Additional mitigation*			■	

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
See Mitigation #14 above. *Supporting sources: 1, 2, 3, 10, 11, 16, 26.*				
b. Result in substantial soil erosion or the loss of topsoil? *The Project site is currently developed with a single-family residence, proposed for demolition. A significant portion of the Project site will be excavated to construct the parking garage and reduce the overall height of the building. The City will require that the project implement best management practices for erosion control through the grading and building permit process.* *The mitigation measures in the GP FEIR regarding geology and soils have been satisfied with these findings.* *Additional mitigation* *See Mitigation #14 above.* *Mitigation #15: The Project will comply with the Contra Costa Clean Water Program requirements and will submit a Storm Water Management Plan to ensure ongoing mitigation from project storm water runoff in compliance with C.3 regulations.* *Supporting sources: 1, 2, 3, 10, 11, 16, 26, 30.*		■		
c. Be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? *The Project site is currently developed with a single-family residence. The residence and upslope show no evidence of any instability on the site. The* Geotechnical Investigation *contains no language with respect to a geologic unit or soil that is unstable or that would become unstable as a result of the project.* *The Project is located in an area that has "virtually no" liquefaction potential (*2002General Plan Map VI-1 Liquefaction Potential*). Nonetheless, the Project will be required to meet all local and state requirements for construction through the grading and building permit process to reduce the effects of seismic-related ground failure, including liquefaction, to an insignificant level.* *Additional mitigation* *See Mitigation #14 above.* *Supporting sources: 1, 2, 3, 16, 26.*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
d. Be located on expansive soil, as defined in Table 18-1-B of the UBC, creating substantial risks to life or property? *The Project* Geotechnical Exploration, *prepared by EnGeo Geotechnical & Environmental Consultants, dated July 24, 2006 states that mapping shows the northern portion of the site covered with alluvial deposits and the southern portion of the site covered with various layers of sandstone. The report includes measures for engineering the foundations to mitigate any potential impact from expansive soils. These measures are recommended as Project mitigation.* *Additional mitigation:* *See Mitigation #14 above.* Supporting sources: 1, 2, 3, 16, 26.		■		
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater? *Not applicable to the Project. The Project is within an urbanized area served by Contra Costa County Sanitary District ("CCCSD") with existing wastewater facilities. No septic tanks or alternative wastewater disposal systems will be required for the Project.* *Supporting sources: 1, 8, 16, 17, 19.*				■
VII. HAZARDS AND HAZARDOUS MATERIALS – Would the project:				
a. Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials? *There is no evidence that the Project site has existing hazardous materials or that the Project will utilize any hazardous materials. Considering when the existing single-family residence was constructed, it is possible that it contains hazardous materials in the form of asbestos or lead paint. The City will require that the developer comply with all applicable rules and regulations with respect to the treatment of hazardous materials through the demolition and building permit process.* *Additional mitigation:* *Mitigation #16: The City will require the developer to obtain all necessary permits and follow all applicable rules and regulations with respect to the demolition of a single-family residence that contains hazardous materials and construction of the condominium building.*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Supporting sources: 10, 11, 16, 19.				
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? *The City will require that the developer comply with all applicable rules and regulations with respect to the treatment of hazardous materials through the demolition and building permit process.* *Additional mitigation:* *See Mitigation #16 above.* *Supporting sources: 10, 11, 16, 19.*			■	
c. Emit hazardous emissions or handle hazardous or acutely hazardous material, substances, or waste within one-quarter mile of an existing or proposed school? *The project is not located within a quarter mile of an existing school. The closest schools are Acalanes High School and White Pony School, both of which are more than 0.4-miles from the site. No hazardous emissions other than vehicle exhaust will be emitted, which are discussed elsewhere in this checklist. Daily operations of a multiple-family residential building would not suggest that hazardous materials or substances will be transported to or from the site* *Supporting sources: 16, 19.*				■
d. Be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5 and, as a result, would it create a significant hazard to the public or the environment? *Not applicable to the Project. The Project is not located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code §65962.5.* *Supporting sources: 16, 19, Government Code §65962.5.*				■
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project areas? *Not applicable to the Project. The Project is not within an airport land use planning area or within two miles of an airport.*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Supporting sources: 1, 2, 3, 16, 17, 18.				
f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? *Not applicable to the Project. The Project is not within the vicinity of a private airstrip.* *Supporting sources: 1, 2, 3, 16, 17, 18.*				■
g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? *The Lafayette Emergency Operations Plan ("EOP") identifies the City's emergency planning, organizational and response policies and procedures. The EOP also includes a hazard analysis and probability matrix. Potential natural hazards include dam failure, earthquake, wildland fire, floods, storms and landslides. No aspect of the Project will substantially impair implementation or physically interfere with the EOP.* *Supporting sources: 1, 2, 3, 9, 16, 17, 18, 23.*				■
h. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? *The Project site is not within or near any area with a risk of wildland fires as shown on the Very High Fire Hazard Severity Zone Map*, produced by the California Department of Forestry & Fire Protection, January 6, 2000. *Supporting sources: 1, 2, 17, 18, 37.*				■
VIII. HYDROLOGY AND WATER QUALITY – Would the project:				
a. Violate any water quality standards or waste discharge requirements? *The Project will result in additional impervious surfaces over existing conditions through the construction of the buildings, parking and other hardscape areas. Runoff from these surfaces could contain pollutants with the potential to impact water quality. The amount of new impervious surfaces will be less than one acre.* *Temporary effects of demolition and construction activities could result in soil disturbance and could lead to an increase in soil erosion. Operation and maintenance of construction equipment could also result in fuel and lubricant spillage.*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Although any impacts to water quality will be insignificant due to the size of the Project, the presence of existing stormwater systems around the sites, and City standards regarding drainage that will be required as part of the permitting process, a Storm Water management Plan pursuant to the Contra Costa Clean Water Program is recommended to ensure compliance with clean water standards. *Also, as stated in Section VII above, the Project design requires excavation for the parking garage. To ensure that there is no violation of water quality standards or waste discharge requirements, the following mitigations are recommended to reduce impacts to a less than significant level.* *Additional mitigations:* *Mitigation #15 above.* *Mitigation #17: The Project will receive all necessary permits from the San Francisco Bay Region Regional Water Quality Board prior to the issuance of a building, grading or demolition permit.* *Mitigation #18:The developer shall be required to submit to the City Engineer for review and approval a Stormwater Control Plan complying with the Stormwater C.3 Guidebook available at www.ccleanwater.org* *Supporting sources: 3, 6, 7, 12, 30.*				
b. Substantially deplete groundwater supplies or interfere substantially with groundwater discharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? *Not applicable to the Project. The City of Lafayette is not located over any significant groundwater basins as identified by the San Francisco Regional Water Quality Control Board.* *Supporting sources: 3, 26.*				■
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on-or off-site? *The Project will not substantially alter the existing drainage patterns of the site. The site will continue to drain from the high point at the south to the low point at the north. Proposed*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
storm water facilities will mitigate any existing erosion or siltation issues on or off site. The developments will be required to comply with the City's grading requirements. No streams or rivers will be altered by the Project. *Supporting sources: 1, 2, 7, 8, 18, 19, 30.*				
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of a stream or river, or substantially increase the rate of amount of surface runoff in a manner that would result in flooding on- or off-site? *For the reasons stated in VIII.a and c above, the Project will not substantially alter existing drainage patterns.* *Supporting sources: 1, 2, 7, 8, 18, 30*				■
e. Create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? *For the reasons stated in VIII.a above, the Project will not create or contribute runoff which would exceed existing or planned stormwater systems or provide substantial sources of polluted runoff.* *Additional mitigations:* *Mitigation #15 above.* *Mitigation #17above.* *Mitigation #18 above.* *Supporting sources: 1, 2, 7, 8, 18, 19, 30.*		■		
f. Otherwise substantially degrade water quality? *For the reasons stated in VIII.a, b, c, d and e, the Project will not otherwise substantially degrade water quality.* *Supporting sources: 1, 2, 7, 8, 18, 19, 30.*		■		
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary, Flood Insurance Rate Map or other flood hazard delineation map? *Not applicable to the Project. The Project site is not within a 100-year flood hazard area as mapped on the Federal Flood Insurance Rate Map.* *Supporting sources: 19, 20.*				■
h. Place within a 100-year flood hazard area structures that				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
would impede or redirect flood flows? *Not applicable to the Project. The Project site is not within a 100-year flood hazard area as mapped on the Federal Flood Insurance Rate Map.* *Supporting sources: 19, 20.*				
i. Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? *Not applicable to the Project. The Project site is not within a mapped flooding or inundation area. There are no levees or dams in the vicinity of the Project.* *Supporting sources: 1, 2, 3, 20.*				■
j. Inundation by seiche, tsunami or mudflow? *Seiche and/or mudflow activity at Lafayette Reservoir could occur during an earthquake. However, the Project site is too far from the Reservoir to be affected by any seiche activity. Tsunami activity is not considered a potential hazard in Lafayette. The Project site is not within a mapped landside or liquefaction hazard area. The Project site has a limited amount of slope above the building, which will be stabilized and engineered, thus reducing the potential for mudflow to less than significant.* *Supporting sources: 1, 2, 3.*			■	
IX. LAND USE PLANNING – Would the project:				
a. Physically divide an established community? *The Project site is infill in an urbanized area, and is designated for urban uses in the General Plan and Zoning Ordinance. The development of the Project is consistent with the overall land use goals and policies in these documents. Given that the Project site is surrounded by single-family residential and multiple-family residential land uses and is situated at the end of a cul-de-sac, the Project not physically divide an established community.* *Supporting sources: 1, 4, 6, 16.*				■
b. Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? *The General Plan and Zoning Ordinance do not include any*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
provisions to avoid or mitigate environmental effects at the Project site. However, the Project proponent is seeking an increase to residential density and height limit established by the General Plan. These amendments to the General Plan have the potential to have a significant impact on the environment unless the City of Lafayette can make the following findings: *1. The change requested is consistent with the remainder of the general plan and each element of it.* *2. The proposed amendment is in the public's interest.* *Additional mitigations:* *Mitigation #1 above.* *Supporting sources: 1, 3, 4, 6, 16.*				
c. Conflict with any applicable habitat conservation plan or natural community conservation plan? *Not applicable to the Project. The Project site is infill in an urbanized area and not included in any habitat conservation plan or natural community conservation plan. Reference IV.f above.* *Supporting sources: 1, 2, 3, 4, 6, 16.*				■
X. MINERAL RESOURCES – Would the project:				
a. Result in the loss of availability of known mineral resources that would be of value to the region and the residents of the state? *Not applicable to the Project. There are no known mineral resources within Lafayette.* *Supporting sources: 1, 2, 3, 7, 17.*				■
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? *Not applicable to the Project. There are no mineral resource recovery sites within Lafayette.* *Supporting sources: 1, 2, 3, 6.*				■
XI. NOISE – Would the project result in:				
a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? *The Project is located within the 70-75 dBA noise contours as shown on* Map VII-1 Projected Noise Contours *in the* 2002 Lafayette General Plan. *This is within the conditionally*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
acceptable exterior noise exposure range of 55-75 dBA for residential, hotels and motels uses as long as noise insulation measures are incorporated into the design. To reduce the Project's impacts in the long and short terms, the following mitigations are recommended: *Mitigation #19: The City will require the applicant to demonstrate that adequate noise insulation measures are incorporated into the design to mitigate interior noise levels to appropriate levels.* *Mitigation #20: The applicant will limit construction activities to Mondays through Fridays from the hours of 8:00 am to6:00 pm. Construction will not be allowed later than these hours and/or on Saturdays, Sundays or federal holidays unless prior approval is granted by the City after consultation with adjacent uses.* *Mitigation #21: The City will require provisions in construction plans, documents and contracts that all construction equipment is fitted with exhaust muffling and noise control filter devices.* *Supporting sources: 1, 2, 3, 4, 6, 16.*				
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? *The only potential for groundborne vibration and noise would be during the demolition and construction associated with the Project.* *Mitigations #20 & #21 are recommended to address these short-term impacts.* *Supporting sources: 1, 2, 3, 4, 6, 16.*		■		
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? *According to the GP, the minimum late night background sound level exceeded about 90% of the time is about 45 dBA; with higher levels experienced during the day. The predicted noise levels for the rooftop mechanical equipment would be of the order of 40 dBA or less, well below the ambient noise in the area, given the Project's proximity to Hwy 24, BART, multiple-family residential and commercial uses. The mitigation measures in the General Plan FEIR regarding noise have been satisfied with these findings.* *Supporting sources: 1, 2, 3, 4, 6, 16.*			■	

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? *There could some increase in ambient noise levels resulting from construction activities.* *Mitigations #20 & #21 are recommended to address any periodic increases in noise levels. .* *Supporting sources: 1, 2, 3, 4, 6, 16.*		■		
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of an airport, would the project expose people residing or working in the project area to excessive noise levels? *Not applicable to the Project. Lafayette is not within an airport land use planning area or within two miles of an airport.* *Supporting sources: 1, 2, 3, 18.*				■
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? *Not applicable to the Project. There are no private airstrips in Lafayette.* *Supporting sources: 1, 2, 3, 18.*				■
XII. POPULATION AND HOUSING – Would the project:				
a. Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? *The Project will not induce substantial growth directly or indirectly. The Project is 20 dwelling units on an infill site in an urbanized area. The site is designated in the General Plan and Zoning Ordinance for residential land use and the proposed density is in keeping with surrounding land uses. No new public roads will be constructed and adequate utility services already exist.* *Supporting sources: 1, 3, 4, 6, 19.*			■	
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? *Not applicable to the Project. The development of the Project requires demolition of one single-family residence.*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Supporting sources: 1, 3, 18, 19.				
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? *Not applicable to the Project. The development of the Project requires demolition of one single-family residence thus requiring the relocation of, at most, one family.* *Supporting sources: 1, 3, 18, 19.*				■
XIII. PUBLIC SERVICES				
Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
a. Fire protection? *The threshold of significance for an impact on fire protection services by a development project is an increase in response time. The Project site is less than one-half mile from the closest fire station, which is on Mount Diablo Blvd. The Project will be required to meet current fire safety standards including the requirement for installing fire sprinklers throughout the building. The Project will not result in an increase in response time for fire protection services.* *Supporting sources: 1, 2, 3, 4, 13, 16, 19.*				■
b. Police protection? *The threshold of significance for an impact on police services by a development project is an increase in response time. The Project is approximately 1.75-miles from the Lafayette Police Station, which is on Mount Diablo Blvd. In most circumstances, responding officers will be dispatched from their location in the field, wherever on patrol, not from the Police Station. There is no evidence to suggest that the Project will increase the response time for police services.* *Supporting sources: 1, 2, 3, 4, 16, 19.*				■
c. Schools? *The Project will be served by Lafayette School District for kindergarten through eighth grade and by the Acalanes Union High School District for grades nine through twelve. Students would attend Burton Valley Elementary, Stanley Middle, and Acalanes High School. Given the project is comprised of 20*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
dwelling units, each district reports that it would to be able to accommodate the number of students that might ultimately live in the Project. *Supporting sources: 1, 2, 3, 4, 16, 19, 38, 39.*				
d. Parks? *The threshold of significance for an impact on parks and recreation services is a development project that would add residents in a number that would exceed the City's standards for parks. The General Plan acknowledges that the City of Lafayette has a deficit of 46.2 acres of parks and recreation facilities when compared to the 5-acres per 1,000 residents standard. The Project's 20 units will add additional residents and thus increase demand on the City's existing park facilities.* *Additional Mitigations:* *Mitigation #22: The developer shall be required to contribute Parkland Dedication Fees, as adopted by City Council Ordinance and in effect at the time a building permit is issued, to be used to purchase new or improve existing parks and recreation facilities.* *Mitigation #23: The developer shall be required to contribute toward improvements to a pocket park at Mt. Diablo Boulevard & Mt. Diablo Court. The design and Improvement plans shall be reviewed and approved by the Design Review Commission, Downtown Street Improvement Master Plan Implementation Committee, Park Improvement Advisory Group, Parks, Trails and Recreation Commission, and the City Engineer* *Mitigation #24: The developer shall make an irrevocable offer of dedication for a non-exclusive 15-ft. wide easement along the northern property line for a future pedestrian/bicycle linkage from Mt. Diablo Court to Pleasant Hill Road.* *Mitigation #25: The developer shall contribute monies toward the construction of a new 5-ft. concrete sidewalk over the easement outlined in Mitigation #24 above.* *Supporting sources: 1, 2, 3, 4, 16, 19.*		■		
e. Other public facilities, services? *The Project will not result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services.*		■		

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Supporting sources: 1, 2, 3, 4, 16, 19.				
XIV. RECREATION				
a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? *For the reasons stated in XIII.d above, the impact of additional residents on parks and recreation facilities will be mitigated to a less than significant level.* *Additional mitigations:* *See Mitigation #22 above* *See Mitigation #23 above* *See Mitigation #24 above* *See Mitigation #25 above* *Supporting sources: 1, 2, 3, 4, 16, 19.*				■
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment? *The developer shall contribute monies to be used to purchase new or improve existing parks and recreation facilities. In addition, the developer shall make improvements to a pocket park at the corner of Mt. Diablo Boulevard and Mt. Diablo Court. The park area is small and the improvements are envisioned to be modest, for use as passive, rather than active, recreation. The design and Improvement plans shall be reviewed and approved by the Design Review Commission, Downtown Street Improvement Master Plan Implementation Committee, Park Improvement Advisory Group, Parks, Trails and Recreation Commission, and the City Engineer to ensure that the design is consistent with the General Plan, Zoning Ordinance and will not have an adverse affect on the environment.* *Additional mitigations:* *See Mitigation #22 above* *See Mitigation #23 above* *Supporting sources: 1, 2, 3, 4, 16, 19.*			■	

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
XV. TRANSPORTATION / TRAFFIC – Would the project?				
a. Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? *The Project traffic study concludes that using the CCTA methodology, the levels of service for all study intersections are expected to have no changes after the Project is constructed.* *Analyzing the intersections that are most directly impacted by the Project (Mount Diablo Blvd. and Mt. Diablo Court and Mount Diablo Blvd. and Pleasant Hill Road), the study concludes that the addition of project traffic to existing traffic volumes would not significantly impact the intersections during peak hours.* *Given the speed of traffic, the horizontal and vertical alignment of Mt. Diablo Boulevard, and the limited site distance at Mt. Diablo Court,t he City Engineer recommends that a signal be installed to improve safety at this intersection.* *Additional Mitigations:* *Mitigation #26: The developer shall install a three-way traffic signal, per City of Lafayette standard, at Mt. Diablo Boulevard & Mt. Diablo Court* *Supporting sources: 1, 2, 3, 4, 7, 8, 16, 19, 25.*		■		
b. Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? *The Project traffic study concludes that using the CCTA methodology, the levels of service for all study intersections are expected to have no changes should the Project be constructed.* *Supporting sources: 1, 2, 3, 4, 7, 8, 16, 19, 25.*				■
c. Result in a change in air traffic patterns, including whether an increase in traffic levels or a change in location that results in substantial safety risks? *Not applicable to the Project. There are no airports or airfields in Lafayette or in the area around Lafayette.* *Supporting sources: 1, 2, 3, 18.*				■
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
The Project will not change the alignment of adjacent streets, and the Project is not incompatible with adjacent uses. The Project traffic study did not identify any increase in traffic hazards. The Project should decrease hazards through the installation of a traffic signal at Mt. Diablo Boulevard and Mt. Diablo Court. *Supporting sources: 1, 2, 3, 4, 7, 8, 16, 19, 25.*				
e. Result in inadequate emergency access? *The Project includes adequate emergency access. In addition, the site is very near Mount Diablo Blvd., State Route 24 and the Pleasant Hill Road off-ramp, the major arterials through Lafayette and the primary access for the fire and police stations. Emergency access will be more than adequate.* *Supporting sources: 4, 16, 17, 19, 23*				■
f. Result in inadequate parking capacity? *The Project provides adequate on-site parking, far in excess of that required by the Lafayette Municipal Code. The project provides 51 parking spaces (in a garage beneath the building and surface spaces outside) where a total of 29 spaces are required. The project will also offer locations for bicycle parking.* *Supporting sources: 6, 7, 16, 18, 19, 25.*			■	
g. Conflict with adopted policies, plans or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? There is no evidence that suggests the Project will potentially Conflict with adopted policies, plans or programs supporting alternative transportation. *County Connection bus Route 206 runs along Mt. Diablo Boulevard which is within walking distance of the Project site. The Project includes the installation of sidewalks which will fill gaps in existing pedestrian linkages. The Project will provide bicycle parking facilities on site.* *Supporting sources: 1, 2, 3, 7, 8, 16, 19, 25.*			■	
XVI. UTILITIES AND SERVICE SYSTEMS – Would the project:				
a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? *The Project is in an urban area with wastewater service provided by the Central Contra Costa Sanitary District (CCCSD). CCCSD has not identified the Project area as*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
deficient in capacity in its Ten-Year Capital Improvement Plan. Further, given CCCSD's facilities and plans for expansion, any increases in wastewater generated by the level of development described in the General Plan will not be significant. Therefore, the Project will not exceed any wastewater treatment standards. *Supporting sources: 1, 2, 3, 7, 16, 19.*				
b. Require or result in the construction of new water or wastewater treatment facilities, the construction of which would cause significant environmental effects? *For the reasons stated in XVI.a above, the Project will not require the construction of water or wastewater treatment facilities.* *Supporting sources: 1, 2, 3, 7, 16, 19.*				■
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? *The Project will generate additional impervious surfaces which could result in the need to install new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. The following mitigations are recommended to reduce the potential impact to a less than significant level.* *Additional Mitigations:* *Mitigation #15 above.* *Mitigation #18 above.* *Mitigation #27: The City Engineer shall review the project plans for conformance with the Contra Costa County Clean Water Program's storm water management plan best management practices which call for dissipation and infiltration on site to the maximum extent practicable.* *Supporting sources: 1, 2, 3, 7, 8, 16, 19.*				■
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? *EBMUD's water service plans account for the growth anticipated in the GP through 2020. Therefore, there will be sufficient water supplies for the Project.*				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
Supporting sources: 1, 2, 3, 7, 16, 19.				
e. Result in a determination by the wastewater treatment provider that serves or may serve the project that it has the adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? *For the reasons stated in XVI.a above, the Project will not require the construction of water or wastewater treatment facilities.* *Supporting sources: 1, 2, 3, 7, 16, 19.*				■
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? *There is adequate disposal capacity for the growth anticipated in the General Plan. Pleasant Hill Bayshore Disposal collects solid waste in Lafayette and transports it to the Contra Costa Solid Waste Transfer and Recovery Station in Martinez where it is taken to the Keller Canyon Landfill in Pittsburg. This landfill opened in 1992 and has an estimated life of 75 years.* *Supporting sources: 1, 2, 3, 14, 16.*				■
g. Comply with federal, state and local statutes and regulations related to solid waste? *The California Integrated Waste Management Act of 1989 (AB 939) required a 25 percent reduction in the amount of solid waste going into landfills at the end of 1995. A 50 percent landfill waste reduction was required by the year 2000. In 2001, Lafayette achieved a 45 percent diversion rate falling short of the state-mandated 50 percent diversion goal. The Contra Costa Solid Waste Authority filed an extension request with the State on behalf of the City outlining a plan for achieving 50 percent diversion. The plan includes recycling more construction and demolition ("C&D") debris, exploring the feasibility of collecting food waste with yard waste, commingling recyclables and increasing school recycling diversion.* *Solid waste generated by the Project is not expected to inhibit or impact Lafayette's ability to achieve a 50 percent diversion rate. However, demolition and construction activities necessary for development will generate solid waste. The Project will comply with the City's regulations for the recycling of C&D debris.* *Supporting sources: 6, 7, 8, 14, 16.*				■
XVII. MANDATORY FINDINGS OF SIGNIFICANCE				
a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a				■

	Potentially Significant Impact	Less Than Significant with Mitigation	Less Than Significant Impact	No Impact
fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? *See IV and V above.*				
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects?) *See I, III, IV, VIII, IX, XII, XIII, XIV, XV and XVI.*				■
c. Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly? *See III, VI, VII, VIII, IX, XI, XII, XIII, XIV, XV and XVI.*				■

SUPPORTING SOURCES

1. *Lafayette General Plan,* October 2002.
2. *Data Base, Lafayette General Plan*, Leonard Charles & Associates, May 1992.
3. *Final Environmental Impact Report, Lafayette General Plan Update*, Leonard Charles & Associates, October 2002.
4. *Redevelopment Plan, The Lafayette Redevelopment Project*, Lafayette Redevelopment Agency, 1995.
5. *Final Environmental Impact Report, Lafayette Redevelopment Project*, Urban Futures, Inc., November 1994.
6. *City of Lafayette Municipal Code*, as amended.
7. City of Lafayette Planning and Building Services Division
8. City of Lafayette Engineering Services Division
9. City of Lafayette Police Department
10. Contra Costa County
11. Lamorinda Building Inspection Office
12. Contra Costa County Clean Water Program
13. Contra Costa County Fire Protection District
14. Contra Costa County Solid Waste Authority
15. Contra Costa County Transportation Authority
16. Experience with other projects of this size and nature
17. Planner's knowledge of the area
18. Field inspection / investigation
19. Project description, plans and building program.
20. *FIRM Flood Insurance Rate Map*, City of Lafayette, California, Contra Costa County, FEMA, 1996.
21. *Improvers of Lafayette*, Andrew H. Young, Lafayette Historical Society, 1981.
22. *La Fayette, A Pictorial History*, Sandy Kimball, Lafayette Historical Society, 1976.
23. *Lafayette Emergency Operations* Plan, July 2001.

24. *Preliminary Historic Resources Inventory*, Contra Costa County, California, 1976.
25. *Transportation Study for the Lafayette Park Terrace Residential Project,* Omni-Means Engineers, October 2005
26. *Geotechnical Exploration, Lafayette Park Terrace,* EnGeo Geotechnical & Environmental Consultants, July 24, 2006
27. *Contra Costa County Important Farmland Map, Farmland Mapping and Monitoring Program, 2000*
28. *California Historical Resources Information System*, January 2003
29. *Not used*
30. Contra Costa Clean Water Program NPDES Permit Requirements for new development
31. *Downtown Street Improvement Master Plan,* Russ Beatty, March 1998
32. *Arborist Report,* Joseph McNeil Consulting Arborist, January 29, 2006
33. *California State Highway Code*
34. *Recommendations,* City landscape consultant, Inside Out, August 9, 2006
35. *Recommendations,* Contra Costa Fire Protection District
36. *City of Lafayette Residential Design Review Guidelines,* 1990
37. *Very High Fire Hazard Severity Zone Map*, CA Department of Forestry & Fire Protection, January 6, 2000
38. Lafayette School District, Jennifer Sabroe, Office of the Superintendent, November 30, 2006
39. Acalanes Union High School District, Janice Sullivan, Office of the Assistant Superintendent, November 30, 2006

NOTE: Supporting sources are available under separate cover and/or available for review at the City of Lafayette, Planning Services Division, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549

RECORDED AT REQUEST OF
AND WHEN RECORDED RETURN TO:
City of Lafayette
3675 Mt. Diablo Blvd, Suite 210
Lafayette, California 94549
Attn: City Manager

Fee Exempt - Gov't Code §6103

(Space above for Recorder's Use)

LAFAYETTE PARK TERRACE DEVELOPMENT AGREEMENT

between

THE CITY OF LAFAYETTE,
a California municipal corporation

and

OWENS LAFAYETTE PROPERTIES, LLC
a California limited liability company

[Dated as of October 14, 2008 for reference purposes only]

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered by and between THE CITY OF LAFAYETTE, a California municipal corporation ("City"), and OWENS LAFAYETTE PROPERTIES, LLC, a California limited liability company ("Owner") with reference to the following facts:

RECITALS.

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864 et seq., of the Government Code. City, a general law city, is authorized pursuant to the Development Agreement Statute to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing predictability for both City and Owner in the development process. Owner has requested that City enter into a development agreement for the development of the Property, as defined below. City enters into this Agreement pursuant to the provisions of the California Government Code, the City's General Plan, the City Municipal Code, and applicable City policies.

B. Owner is the owner in fee of that certain real property consisting of approximately 2 acres of land located in the City of Lafayette, Contra Costa County, State of California, also commonly referred to as Assessor Parcel Numbers 233-131-020 and 233-131-022 and more particularly described in Exhibit "A" (the "Property"). Owner desires to develop the Property with residential use.

C. The Owner applied for and the City approved a General Plan Amendment on October 14, 2008 that reclassified the Property from Medium Density Single-Family Residential to Low Density Multifamily Residential ("General Plan Amendment') and a Zoning Amendment that rezoned the Property from Single-Family Residential District-15 (R-15) to Multiple Family Residential District A (MRA) ("Zoning Amendment"). A copy of the General Plan Amendment is attached hereto as Exhibit "B-1" and incorporated herein by reference. A copy of the Zoning Amendment is attached hereto as Exhibit "B-2" and incorporated herein by reference.

D. Owner desires to develop the Property in a manner consistent with the uses identified for the Property in the General Plan Amendment and Zoning Amendment.

E. This Agreement assures development in accordance with the City's General Plan, as amended by the General Plan Amendment. The development of the Property pursuant to the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Owner has consented in writing, and Subsequent Development Approvals as each of those terms and phrases is defined within this Agreement shall be referred to as the "New Development Plan" as hereinafter defined.

F. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by vesting the permitted uses, density, intensity of use, and timing and phasing of development consistent with the New Development Plan in exchange for Owner's commitment to provide significant improvements to City ("Improvements") as set forth in Section 8.17.

G. This Agreement allows City to realize significant economic, affordable housing, recreational, park, open space, social, and public benefits, which will advance the interests and meet the needs of the City's residents and visitors to a greater extent than otherwise permitted.

H. Owner desires to enter into this Agreement in order to eliminate uncertainty in planning for and secure orderly development of the Project, as hereinafter defined.

AGREEMENT

City and Owner agree as follows:

1. Interest of Owner. Owner represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

2. Public Hearings. On September 22, 2008, after providing notice as required by law, the City Council held a public hearing on this Agreement, considered the recommendations of the Planning Commission, and made the findings set forth in Section 3.

3. City Council Findings. The City Council finds that this Agreement:

   3.1 Subject to the approval of the General Plan Amendment becoming effective on or before the Effective Date, is consistent with City's General Plan.

   3.2 Will ensure a desirable and functional community environment, provide effective and efficient development of improvements, infrastructure, and services appropriate for the development of the Project, assure attainment of maximum effective utilization of resources within the City, moderate the cost of housing and development to the consumer, and provide other significant benefits to the City and its residents.

   3.3 Strengthens the public planning process, encourages private participation in comprehensive planning, particularly with respect to the implementation of the City's General Plan, and reduces the economic costs of development and government.

   3.4 Is in the best interests of the citizens of the City because the public health, safety and welfare will be served by entering into this Agreement.

4. Continuing Obligations. This Agreement binds the City now and in the future. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just and reasonable. City has concluded that the Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

5. Definitions. In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings, whether or not capitalized herein:

5.1 "Affordable Housing Cost" means the California Health and Safety Code Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development, plus the actual homeowners associations fees, dues and assessments as established by the homeowners association from time to time.

5.2 "Affordable Unit" means a unit of housing that is located within the City and is affordable to Moderate Income or Low Income Households.

5.3 "Agreement" shall mean this Development Agreement between the City and Owner. The term "Agreement" shall include any amendment properly approved and executed pursuant to Section 7.5.

5.4 "AMI" means the area median income for Contra Costa County, California adjusted for family size appropriate for the Unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and California Health and Safety Code Section 50093.

5.5 "Certificate of Completion" shall mean the written certificate of City that the Project is complete and in compliance with the terms and conditions of this Agreement.

5.6 "City" shall mean the City of Lafayette, a California municipal corporation.

5.7 "City Council" shall mean the governing body of the City.

5.8 "City Municipal Code" shall mean the Lafayette Municipal Code as of the Effective Date.

5.9 "Day" refers to a calendar day unless specifically stated as a "business day."

5.10 "Default" shall mean a failure by Owner to be in compliance with every term and condition of this Agreement, provided that insignificant or immaterial deviations or failures of compliance shall not constitute a default unless they are cumulatively significant or material.

5.11 "Development" shall mean the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public and private facilities related to the Project whether located within or outside the

Property; the construction of buildings and structures; and the installation of landscaping; and other improvements.

5.12 "Development Approvals" shall mean all permits and other entitlements approved or issued by the City for the use of, construction upon, and/or development of the Property. For the purposes of this Agreement, Development Approvals shall be deemed to include, but are not limited to, the following actions including revisions, addenda, amendments, and modifications to these actions:

a. General Plan and General Plan amendments;

b. Specific Plan and Specific Plan amendments;

c. tentative and final subdivision and parcel maps;

d. conditional use permits, use permits and land use permits;

e. zoning;

f. grading and building permits;

g. certificates of compliance and/or lot line adjustments;

h. street, drainage, utility, and landscape permits;

i. occupancy permits; and

j. environmental review documents for the Project.

5.13 "Development Impact Fees" shall mean all fees established and imposed upon the Project by the City pursuant to the Mitigation Fee Act as set forth in California Government Code Section 66000 et seq. including the Parkland Dedication Fee and Parkland Facilities Fee. "Development Impact Fees" shall not include any fees that have not been established and imposed pursuant to the Mitigation Fee Act.

5.14 "Effective Date" shall mean the date this Agreement is recorded in the Official Records of Contra Costa County, California.

5.15 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date, including the General Plan Amendment and Zoning Amendment.

5.16 "General Plan" shall mean the City of Lafayette General Plan adopted by the City on October 28, 2002, pursuant to Resolution No. 2002-56 and as amended pursuant to Resolution No. 2008-035.

5.17 "Land Use Regulations" shall mean all ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or

intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Project. "Land Use Regulations" do not include any City ordinance, resolution, code, rule, regulation or official policy governing:

a. The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in the City;

b. Taxes and assessments of general application upon all residents of the City, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g., excise tax) or to directly finance the acquisition or dedication of open space or any other public improvement in respect of which the Owner is paying any fee or providing any improvement pursuant to this Agreement;

c. The control and abatement of nuisances;

d. The granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property, as may be approved by mutual agreement between Owner and City;

e. The exercise of the power of eminent domain.

5.18 "Low Income Household" means persons and families whose income does not exceed eighty percent (80%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and Health and Safety Code Section 50093, as this section may hereafter be amended from time-to-time by the State of California. In no event, however, shall the stated threshold for a Low Income Household be, for purposes of this Agreement, less than eighty percent (80%) of the then-current area median income of the County of Contra Costa.

5.19 "Moderate Income Household" means persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to tome by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time. In no event,

however, shall the stated threshold for a Moderate Income Household be, for purpose of this Agreement, less than one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa.

5.20 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, lender, and their successors and assigns.

5.21 "New Development Plan" means the Existing Land Use Regulations, this Agreement, the Subsequent Land Use Regulations to which Owner has consented in writing, and Subsequent Development Approvals.

5.22 "Owner" refers to Owens Lafayette Properties, LLC, a California limited liability company, who holds legal title to the Property. "Owner" includes successors in interest to Owens Lafayette Properties, LLC.

5.23 The "Parties" means the City and Owner. A "Party" refers to either the City or the Owner.

5.24 "Project" means the Development of the Property as set forth in the New Development Plan.

5.25 "Property" means the real property described in Exhibit "A".

5.26 "Qualified Residence Period" means the period of time beginning on the date the Certificate of Completion for the Project is recorded and ending on the date which is forty-five years after the date the Certificate of Completion for the Project is recorded.

5.27 "Regulatory Agreement" means that certain regulatory agreement between the City and Owner of even date herewith, substantially in the form attached hereto as Exhibit "C".

5.28 "Reservation of Authority" means the rights and authority specifically reserved to City which limits the assurances and rights provided to the Owner under this Agreement. The Reservation of Authority is further defined in Section 8.7.

5.29 "Subsequent Development Approvals" means all Development Approvals and permits for the Project required or permitted by the Existing Land Use Regulations, the Subsequent Land Use Regulations, the General Plan, and this Agreement after the Effective Date, including, without limitation, all development review approvals required under the City Municipal Code and the General Plan, site development permits, excavation, grading, building, construction, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, drainage, landscape, or other permits or approvals necessary for the grading, construction, marketing, use and occupancy of the Project.

5.30 "Subsequent Land Use Regulations" means those Land Use Regulations adopted and effective after the Effective Date which are described in Section 8.7 of this Agreement (Reservation of Authority).

5.31 "Term" means the term of this Agreement as set forth in Section 7.2 of this Agreement.

5.32 "Unit" means one (1) of the affordable Housing Units as set forth in Section 8.18.

6. EXHIBITS. All exhibits attached to this Agreement are incorporated as a part of this Agreement. Those exhibits are:

Exhibit Designation	Description
"A"	Legal Description of the Property
"B-1"	General Plan Amendment
"B-2"	Zoning Amendment
"C"	Affordable Housing Regulatory Agreement
"D"	Form of Deed of Trust

7. GENERAL PROVISIONS

7.1 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. The Development shall be carried out only in accordance with the terms of this Agreement. Until released or terminated pursuant to the provisions of this Agreement or until Owner has fully performed its obligations arising out of this Agreement, no portion of the Property shall be released from this Agreement.

7.2 Term of Agreement. The Term shall commence on the Effective Date. The Term shall continue for a period of ten (10) years from the Effective Date. As provided in Section 7.3 or elsewhere within this Agreement, the Term may end earlier than the expiration of the Term.

7.3 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:

a. Expiration of the Term as set forth in Section 7.2 of this Agreement;

b. Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement;

c. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement;

d. Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance by City, or the applicable public City, of all required dedications and the satisfaction of all of Owner's obligations under this Agreement; or

e. As may be provided by other specific provisions of this Agreement.

7.4 Effect of Termination. Subject to Section 8.10, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:

a. the completion of obligations which were to have been performed prior to termination, other than those which are separately addressed by Section 11 below;

b. the performance and cure rights set forth in Section 11 below; and

c. those obligations that are specifically set forth as surviving this Agreement, such as those described in Sections 10.1 through 10.7, and 13.15(b).

7.5 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Owner in the same manner as its adoption, as set forth in California Government Code Section 65868. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of Contra Costa County, California. An amendment or other modification of this Agreement will continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.

7.6 Release of Obligations With Respect to the Property Upon Certification of Occupancy. Notwithstanding any other provision of this Agreement:

a. When all of the units, including the affordable housing units, within the Property have been finally subdivided and sold or leased to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the Property, the Property and its owner shall have no further obligations under and shall be released from this Agreement.

b. Upon the conveyance of any lot, parcel, or other property, whether residential or open space, to a homeowners' association, property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement.

No formal action by the City is required to effect this release, but, upon Owner's request, City shall sign an estoppel certificate or other document to evidence the release.

7.7 Minor Modifications. The provisions of this Agreement require a close degree of cooperation between the Parties and "Minor Changes" to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. "Minor Changes" shall mean changes to the Project that are consistent with the New Development Plan, which do not result in a change in use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date.

Accordingly, the Parties may mutually consent to adopting "Minor Changes" through their signing of an "operating memorandum" reflecting the Minor Changes. Neither the Minor Changes nor any Operating Memorandum shall require public notice or hearing. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are "Minor Changes" subject to this Section 7.7 or more significant changes requiring amendment of this Agreement. The City Manager may execute any operating memoranda without City Council action.

7.8 Term of Map(s) and Other Project Approvals.

a. *Subdivision Maps.* Pursuant to Government Code Section 66452.6(a), the term of any subdivision or parcel map that is approved for all or any portion of the Property shall be extended to a date coincident with the Term.

b. *Land Use Permit.* Land Use Permits for the Project shall have terms that coincide with the term of the subdivision map or parcel map for the Property.

c. *Other Development Approvals.* Pursuant to Government Code Section 65863.9, all other Development Approvals for the project shall automatically be extended for a term ending concurrently with the applicable tentative map for the Project. Pursuant to Section 7.8(a) above, those terms shall be the same as the Term of this Agreement.

7.9 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not City. This Agreement does not create any third-party beneficiary rights.

7.10 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attn: City Manager

With a copy to:

Best Best & Krieger LLP
2001 N. Main Street, Suite 390
Walnut Creek, California 94596
Attn: Malathy Subramanian, Esq.

If to Owner, to each of the following:

Owens Lafayette Properties, LLC
6654 Koll Center Parkway, Suite 185
Lafayette, California 94566
Attn: H. Bruce Torquemada

With a copy to:

Gagen, McCoy, McMahon & Armstrong
279 Front Street
P.O. Box 218
Danville, California 94526
Attn: Allen Moore, Esq.

City or Owner may change its address by giving notice in writing to the other at the addresses listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

8. DEVELOPMENT OF THE PROPERTY.

8.1 Owner's Vested Right. Owner shall have the vested right to complete Development of the Property in accordance with the New Development Plan ("Owner's Vested Right"). To enable Owner to complete the Project, Owner's Vested Right shall include, but not be limited to, the right to the timely issuance of all permits and certificates of occupancy, the timely granting of all approvals, and the timely taking of such other actions that are (i) requested by Owner and (ii) consistent with the terms of this Agreement.

Owner's Vested Right shall be subject to the Reservation of Authority set forth in Section 8.7 and all provisions of this Agreement, and may not be modified or terminated except as expressly provided by this Agreement.

Upon any termination of this Agreement, Owner's rights to continue development of the Project pursuant to the General Plan and the Development Approvals shall be subject to the ordinary exercise of the City's police power. At that time, Owner's vested rights, if any, shall be determined not by this Agreement, but by state and federal statutes and case law and the then current factual state of the Development.

8.2 Governing Land Use Regulations. The Land Use Regulations applicable to the Project and the Property shall be the New Development Plan. An amendment or other modification of this Agreement will not change the applicable Land Use Regulations (i.e., the Existing Land Use Regulations will control), unless the amendment or modification expressly provides otherwise. Subsequent Land Use Regulations shall not apply to the Property, the Development, or the Project, with the following exceptions:

a. Owner and City may mutually agree in writing that the Project will be subject to Land Use Regulations that are adopted after the Effective Date. With the mutual written agreement of the Parties, if those Land Use Regulations do not result in a change in use, a substantial increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Effective Date, an amendment of this Agreement shall not be required to make those regulations applicable to the Property. If any of those effects would occur, then Owner and City shall amend this Agreement in accordance with Section 7.5.

b. The Subsequent Land Use Regulations described in Section 8.7 below shall apply to the Property, the Development, and the Project, but only to the extent permitted by Section 8.7.

Nothing contained in this Section shall be deemed to authorize City to withhold any building permit, approval, and/or certificate of occupancy based on Owner's failure to comply with any Land Use Regulation that is not applicable to the Project because of this Agreement.

8.3 Permitted Uses. Except as otherwise provided within this Agreement, the permitted uses on the Property shall be as provided in the New Development Plan.

8.4 Density and Intensity. Except as otherwise provided within this Agreement, the density and intensity of use for all Development on the Property shall be as provided in the New Development Plan.

8.5 Maximum Height and Size of Structures. Except as otherwise provided within this Agreement, the maximum height and size for all structures on the Property shall be as provided in the New Development Plan.

8.6 Requirement for Reservation and Dedication of Land. Except as otherwise provided within this Agreement, the Project's requirements for reservation and dedication of land shall be as provided in the New Development Plan.

8.7 Reservation of Authority. The following Subsequent Land Use Regulations shall apply to the Property and the Project:

a. Processing fees and charges imposed by the City to cover the City's estimated or actual costs of reviewing and processing applications for Development of the Property, providing inspections, conducting annual reviews, providing environmental analysis, or for monitoring compliance with this Agreement or any Development Approvals granted or issued, provided such fees and charges are in force and effect on a general basis on the date of filing such applications with the City. This Section shall not be construed to limit the authority of City to charge normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse City's expenses attributable to such application, processing and permitting and are in force and effect on a City-wide basis at such time as said approvals and permits are granted by City.

b. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

c. Provided that they are uniformly applied to all development projects within the City, regulations governing engineering and construction standards and specifications, including uniform codes adopted by the City and local amendments to those codes adopted pursuant to state law. Such codes include, without limitation, the City's adopted version of the Uniform Administrative Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.

d. Regulations which may be in conflict with this Agreement but which are objectively required (and there are no available reasonable alternatives) to protect the public health and safety in the event of a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services within the immediate community. Such regulations must be a valid exercise of the City's police power and must be applied and construed so as to provide Owner with the rights and assurances provided in this

Agreement. Any regulations, including moratoria, enacted by City and imposed on the Property to protect the public health and safety in the circumstances described above shall toll the Term and any time periods for performance by Owner and City set forth in this Agreement.

8.8 Development Impact Fees. Except as otherwise expressly provided within this Agreement, Owner shall pay only those Development Impact Fees uniformly applied to all development projects within the City as of the Effective Date. Notwithstanding the above, Owner shall pay the Parkland Dedication Fee and Parkland Facilities Fee.

8.9 Adequacy of Required Infrastructure. Subject to Owner's installation of all infrastructure required to serve the Project in accordance with the requirements of the New Development Plan and subject to City's Reservation of Authority, City acknowledges and agrees that there will be sufficient capacity in the infrastructure and services owned, operated, controlled, and provided by the City, including, without limitation, traffic circulation, storm drainage, trash collection, and flood control, to accommodate the Project. To the extent that City renders such services or owns such infrastructure, and Owner complies with the requirements of this Agreement, City agrees that it will serve the Project and there shall be no restrictions placed upon Owner concerning hookups or service for the Project, except for reasons beyond City's control. Notwithstanding the foregoing, City does not warrant the adequacy of and City shall not be responsible or liable for any infrastructure or services that are not owned, operated, controlled and /or provided by City.

8.10 Right to Develop Project Conditional. Owner acknowledges that City's approval of, and Owner's rights to develop, the Project are contingent and conditioned upon Owner entering into this Agreement, and that Owner has no right or entitlement to develop the Project in the absence of this Agreement and Owner's diligent performance of its obligations under this Agreement. In the event this Agreement is terminated as to any parcel or portion of the Property as a result of a default of Owner or voluntarily by Owner, the rights and authorizations conferred or granted pursuant to this Agreement shall immediately terminate and cease to apply and govern the development of such parcel or portion of the Property. Owner recognizes that in the event this Agreement is terminated, the City may adopt a general plan amendment to reclassify the Property from Low Density Multifamily Residential to Medium Density Single-Family Residential and accordingly rezone the Property from Planned Unit District (P-1) to Single-Family Residential District-15 (R-15) and Owner waives any right or claim to challenge any such general plan amendment or zoning amendment or the City's ability to adopt such general plan amendment or zoning amendment.

8.11 Staffing and Expedited Processing. City shall employ all lawful actions capable of being undertaken by City to (i) promptly accept all complete applications for Subsequent Development Approvals, including Land Use Permits (collectively,

"Applications") and (ii) process and take action upon the Applications in accordance with applicable law. To the extent that Owner desires that the City plan check or process an Application on an expedited basis and to the extent that it requires an additional expense beyond the customary expense applicable to the general public, City shall inform Owner of such additional expense, including the cost of consultants and other third-parties. If acceptable to Owner, Owner shall pay the additional cost and City shall use best efforts to undertake the most accelerated processing time as lawfully possible.

8.12 Changes in Federal and State Law. The Property may be subject to subsequently enacted state or federal laws or regulations, which preempt local regulations, or mandate the adoption of local regulations that conflict with the New Development Plan. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Owner shall provide the other Party with written notice of the state or federal law or regulation, provide a copy of the law or regulation, and a written statement of conflicts with the provisions of the New Development Plan. Promptly thereafter, City and Owner shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations, City and Owner agree to preserve the terms of this Agreement and the rights of Owner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Owner in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Owner. City also agrees to process, in the same expedited manner as set forth for Applications in Section 8.11, Owner's proposed changes to the New Development Plan as may be necessary to comply with such federal or state law and to process such proposed Project changes in accordance with City procedures. Any delays caused by such changes in state or federal law shall toll the term of this Agreement and the time periods for performance by Owner and City set forth in this Agreement.

8.13 Cooperation in Securing Other Governmental Approvals and Permits. City agrees to make its staff available, at Owner's cost, to assist Owner in securing permits and approvals required by other governmental agencies to assure Owner's ability to perform its obligations in a timely manner consistent with the New Development Plan and this Agreement. City does not warrant or represent that any other governmental permits or approvals will be granted.

8.14 Compliance with CEQA. The environmental impacts of the Project have been addressed in the Mitigated Negative Declaration that was approved concurrently with the approval of the General Plan Amendment and Zoning Amendment and this Agreement (the "Mitigated Negative Declaration"). City agrees to cooperate with Owner to process in a timely manner any additional environmental study or report circulated by Owner in connection with the ongoing Development of the Project. City acknowledges and agrees that the Mitigated Negative Declaration provides sufficient detail to satisfy the environmental review requirements for approval of a tentative tract map and the subsequent final tract map for the Project, to the extent such maps are consistent with the General Plan.

8.15 Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of Development in this Agreement. To do so, the Parties acknowledge and provide that Owner shall have the right, but not the obligation, to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment subject to the phasing of the Development set forth in Section 7.16.

8.16 Conditions, Covenants and Restrictions. Owner shall have the ability to reserve and record such restrictions, conditions, and covenants (CC&Rs) against the Property that Owner deems appropriate, in its sole and absolute discretion, that relate to the development, use and operation of the Project, provided such CC&Rs do not conflict with this Agreement or the General Plan. Prior to recordation of such CC&Rs, Owner shall provide a copy of the CC&Rs to City for review and approval by the City Attorney. The City Attorney's review shall be limited to determining if the CC&Rs substantially comply with this Agreement. If the City Attorney fails to provide Owner with a determination of substantial compliance within thirty (30) days following a written request by Owner, City shall be deemed to have approved the CC&Rs and Owner may record the CC&Rs against the Property. The CC&Rs may run with the land and bind Owner's successors and assigns.

8.17 Project Improvements. Notwithstanding any provision of this Agreement, the Existing Land Use Regulations, or the Existing Development Approvals to the contrary, but subject to compliance with all applicable legal requirements, including, but not limited to CEQA, the following requirements for Project Improvements shall apply to the Project and shall be completed and accepted by the City, prior to release of hold on final building inspection:

a. *Sidewalk.* Owner shall install a concrete sidewalk, curb and gutter on the south side of Mt. Diablo Blvd. from the eastern entrance to the Lafayette Park Hotel to the Pleasant Hill Road (approximately 1,400 linear feet) in accordance with City standards or at the sole discretion of the City Manager, or his or her designee, the Owner may contribute an in lieu fee of One Hundred Thousand Dollars ($100,000).

b. *Signal.* Owner shall contribute an in lieu fee for the installation of a three-way traffic signal at the Mr. Diablo Blvd. and Mt. Diablo Court in accordance with City standards in the amount of Seventy-Five Thousand Dollars ($75,000).

c. *Landscape Medians and Lighting.* Owner shall landscape the median on Mt. Diablo Blvd from the Lafayette Park Hotel to Pleasant Hill Road (approximately 1,000 linear feet) and install seven new City

Standard Battery Park style street lights in accordance with the City's adopted median landscape standards ("Lafayette Parkway Median Fee") as approved by the Downtown Street Improvement Implementation Committee ("DSIMPIC") and the City Engineer or at the sole discretion of the City Manager, or his or her designee, the Owner may contribute an in lieu fee of Two Hundred Forty-Five Thousand Dollars ($245,000).

d. *Parkland Improvements.* Notwithstanding, the Parkland Dedication Requirement pursuant to Lafayette Municipal Code Chapter 6-16, Owner shall install parkland improvements to a pocket park located at Mt. Diablo Blvd. and Mr. Diablo Court in accordance with City's standards as approved by the Design Review Commission, DSIMPIC, Park Improvement Advisory Group, Parks Trails & Recreation Commission and the City Engineer or at the sole discretion of the City Manager, or his or her designee, the Owner may contribute an in lieu fee of Fifty Thousand Dollars ($50,000).

e. *Public Access Easement and Sidewalk.* Owner shall grant the City an irrevocable offer of dedication for a ten foot non-exclusive public access easement along the northern property line. The ultimate goal is to provide a non-vehicular connection between Mt. Diablo Court to Pleasant Hill Road. Owner shall pay Twenty Thousand Dollars ($20,000) toward eventual design and construction of a new pathway or sidewalk over the easement.

f. *Plans and Specifications.* Owner shall prepare and submit to the City, for approval by the City Engineer, preliminary plans and specifications for the Sidewalk, Signal, Landscape Medians and Lighting, and Parkland Improvements (collectively, "Improvements') prior to the issuance of: a grading or building permit, which occurs first. The plans and specifications shall be prepared in sufficient detail so City can reasonably evaluate the basic design and layout of the Improvements. The Improvements shall be completed in accordance with the plans and specifications, as approved by the City Engineer, and/or all in lieu fees and other fees set forth in Section 8.17 shall be paid prior to the release of hold on final building inspection.

8.18 Qualified Households. Satisfaction of the City's inclusionary housing requirement by providing 2 Unit to be sold to Moderate Income Households and 1 Unit to be sold to a Low Income Household for the duration of the Qualified Residence Period. There shall be 3 two-bedroom Units to be sold to Qualifying Households to be located in the Project. Owner may waive any fees, dues, and/or special assessments associated with the Homeowners Association as hereinafter defined, for the 3 Units to Qualified Households for the duration of the Qualified Residence Period. Owner shall obtain an executed Regulatory Agreement from the Qualified Household in the form substantially attached as Exhibit "C" to be

recorded against each of the 3 Units concurrently with the close of escrow of the Unit. The City and/or the Redevelopment Agency of the City of Lafayette ("Agency") may contribute to the Project, by spending its affordable housing fund to contribute to the 3 Units to be sold to Qualified Households to further reduce the maximum allowable income. The Units shall be constructed and sold in accordance with the development standards and guidelines set forth in the New Development Plan, and shall be of the same quality and type of architectural detail and finished materials as the Project.

8.19 Regulatory Agreement. At the time Owner opens escrow for the sale of the Units to the Qualified Household, Owner shall notify City in writing and shall cause the Qualified Household to execute the Regulatory Agreement in substantially the form attached as set forth in Exhibit "C" attached hereto, for the Unit. Concurrently with the close of escrow, Owner shall cause the Regulatory Agreement to be recorded against each of the Units to be sold to Qualified Households, in the form attached hereto as Exhibit "C', which provides that the provisions of this Section are applicable to such Unit. In the event the City contributes to the Project as enumerated in Section 8.18, the Regulatory Agreement shall be revised to reflect and preserve the new maximum allowable income.

8.20 Grant of Option. Owner hereby grants an option (the "Option") to City to purchase three (3) Units (the "Option Units") for the price and on the terms and conditions hereinafter set forth. The three (3) Option Units shall be specified by Owner in writing, at any time prior to the issuance of a Certificate of Occupancy for the Option Units.

a. Term. The term of the Option (the "Option Term") shall commence on the Effective Date and shall expire upon the sale by Owner of the last of the Option Units.

b. Exercise of Option. Prior the sale of an Option Unit, Owner shall first offer to sell the Option Unit to City on the same price, terms and conditions as the Option Unit will be offered to the general public. Owner shall make such offer to City by written notice to City. City shall notify Owner in writing of its intent to purchase the Unit within forty-five (45) days of receipt of Owner's Notice. The Parties shall then execute a purchaser and sale agreement for the sale of the Option Unit. If the City fails to purchase the Option Unit at that time, City's option as to that Option Unit shall thereupon expire and the Owner may sell the Option Unit free and clear of the City's option.

8.21 Refund of Fees. Upon any termination of this Agreement, any Development Impact Fees or any other funds of any nature which have been paid by Owner to City in connection with the implementation of the New Development Plan to the

extent that construction has not yet begun at the time of termination shall be refunded to Owner by City.

9. ANNUAL REVIEW.

9.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Owner with the terms of this Agreement ("Annual Review").

9.2 Standards for Annual Review. During the Annual Review, Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. If City Council or its designee finds and determines, based on substantial evidence, that Owner has not complied in good faith with any of the terms or conditions of this Agreement, then City may proceed in accordance with Section 12 of this Agreement pertaining to the potential default of Owner and the opportunities for cure. City shall establish and Owner shall pay a reasonable fee to cover the costs incurred by City in connection with the Annual Review. In any legal action by Owner challenging the City's determination of non-compliance, the court shall conduct a de novo review of Owner's compliance based on the administrative record and determine if the preponderance of evidence supports the City's determination.

9.3 Procedures for Annual Review. The Annual Review shall be conducted by the City Council or its designee. Owner shall be given a minimum of sixty (60) days' notice of any date scheduled for an Annual Review, and shall be provided sixty (60) days' notice of the last date on which information shall be submitted to City staff for inclusion with City staff's report to the City Council or designee regarding the Annual Review. Owner shall not be limited in the information it presents to the City Council or designee for the Annual Review and may, if needed, provide information to the City Council in the first instance at the City Council or designee's hearing on the Annual Review. Within ten days' prior to the Annual Review, Owner shall be provided with all staff reports and other information to be used by the City Council or designee in conducting the Annual Review. Any such information not provided to Owner shall not be considered during the Annual Review and shall not be part of the administrative record unless that information could not have been obtained and/or provided to Owner with reasonable diligence prior to the date of the Annual Review. Should the City Council designate a party other than itself to conduct the Annual Review, these same notice and procedural requirements shall apply to the conduct by the designee of the Annual Review.

9.4 Certificate of Compliance. At any time during any year that the City Council or its designee finds that Owner is in compliance with this Agreement, City shall, upon written request by Owner, provide Owner with a written certificate of good faith compliance within fifteen (15) days of City's receipt of Owner's request for same.

10. THIRD PARTY LITIGATION.

10.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan. Owner has reviewed the General Plan and concurs with City's determination. Neither Owner nor City shall have any liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Owner to develop the Property as contemplated by the New Development Plan or this Agreement, if such failure or inability is the result of a judicial determination that part or all of the General Plan is invalid, inadequate, or not in compliance with law.

10.2 Third Party Litigation Concerning Agreement. Owner shall, at Owner's expense, defend, indemnify, and hold City, its agents, officers and employees harmless from any claim, action or proceeding against City, its agents, officers or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any Development Approvals granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. City may in its discretion participate in the defense of any such claim, action or proceeding.

10.3 Indemnity. In addition to the provisions of Section 10.2, Owner shall indemnify and hold City, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or alleged upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or arising from Development of the Project, except for claims for damages arising through active negligence or willful misconduct of City. Owner shall defend, at Owner's expense, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may in its discretion participate in the defense of any such legal claim, action or proceeding.

10.4 Environmental Contamination. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or alleged, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, resulting in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action or proceeding. Notwithstanding anything to the contrary set forth in this Section, Owner shall not be responsible for clean-up and removal of groundwater contamination migrating to or from an adjacent property not owned by Owner.

10.5 City to Approve Counsel. With respect to Sections 10.2 through 10.4, City reserves the right to either (a) approve the attorney(s) that Owner selects, hires or otherwise engages to defend City, which approval shall not be unreasonably withheld, or (b) conduct its own defense, provided, however, that if City elects to conduct its own defense, Owner shall reimburse City for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefore. City shall not have the right to approve counsel selected by Owner to represent Owner's interests in any litigation.

10.6 Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Owner relating to this Agreement, the General Plan Amendment, the Development Approvals or other development issues affecting the Property shall not delay or stop the Development, processing or construction of the Project, approval of the Development Approvals, or issuance of "Ministerial Approvals," unless the third party obtains a court order preventing the activity. City shall not stipulate to the issuance of any such order. For purposes of this Section, the term "Ministerial Approvals" shall mean the issuance of approvals or permits requiring the determination of conformance with the Land Use Regulations, including, without limitation, site plans, design review, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, grading permits, improvement permits, wall permits, building permits, lot line adjustments, conditional and temporary use permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property

10.7 Survival. The provisions of Sections 10.1 through 10.7 inclusive, shall survive the termination, cancellation or expiration of this Agreement.

11. DEFAULTS AND REMEDIES.

11.1 Default Defined. A Default, as defined in Section 5.7 of this Agreement, may establish cause for early termination of this Agreement. This provision does not limit the right of either Party to pursue other non-termination remedies permitted by this Section 11 for material defaults which do not constitute a Default.

11.2 Notice and Termination. Before either Party may declare a default or termination of this Agreement or bring a legal action to terminate this Agreement, the procedures of this Section must be followed. In the case of a default arising from the conduct of an Annual Review, the procedures of this Section shall be strictly followed and shall constitute a second review of the good faith compliance of Owner.

The Party asserting a default (the "Non-Defaulting Party") may elect to do so by providing written notice to the Party alleged to be in default (the "Defaulting Party") setting forth the nature of the default and the actions, if any, required by the Defaulting Party to cure the default. The Defaulting Party shall be deemed in

default if the Defaulting Party fails to cure the default within thirty (30) business days after the date of such notice (for monetary defaults) or within sixty business (60) days after the date of such notice (for non-monetary defaults). If the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, the Defaulting Party shall not be deemed to be in default if it has commenced efforts to cure the default within those sixty (60) days and continues to diligently pursue completion of the cure.

11.3 Default Remedies. A Party who complies with the notice of default and opportunity to cure requirements of Section 11.2 may, at its option, institute legal action to cure, correct, or remedy the alleged default, enjoin any threatened or attempted violation, enforce the terms of this Agreement by specific performance, or pursue any other legal or equitable remedy. These remedies shall be cumulative rather than exclusive, except as otherwise provided by law.

Furthermore, the City, after first following the procedures set forth in Section 11.2, may give notice of its intent to terminate or modify this Agreement for an uncured default, in which event the matter shall be scheduled for consideration and review by the City Council, using the notice and procedure provisions of Section 10.3 shall apply in the same manner as for an Annual Review. The Standard of Review set forth in Section 9.3, however, shall be employed rather than the substantial evidence standard set forth in Section 9.2.

11.4 Standard of Review. Any determination by City that Owner is in default shall be based on the preponderance of evidence before the City. In any legal action by Owner challenging the City's determination of default, the court shall conduct a de novo review of Owner's compliance based on the administrative record and determine if the preponderance of evidence supports the City's determination.

11.5 Owner's Exclusive Remedy. City and Owner acknowledge that neither City nor Owner would have entered into this Agreement if it were to be liable in damages under or with respect to the New Development Plan, or the Development Approvals. Accordingly, except as stated in the next sentence, neither Party shall sue the other for damages or monetary relief for any matter related to the New Development Plan. City may, however, sue Owner for the payment of sums due from Owner to City under provisions of this Agreement which are expressly stated to survive termination of this Agreement. Owner's remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance.

11.6 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Owner to insist upon the strict performance of any provision of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of default and opportunity to cure requirements of Section 11.2 and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, Court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 13.10 shall not be considered waivers subject to this Section 11.6.

11.7 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other.

12. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

12.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Project.

12.2 Mortgagee Protection. City acknowledges that the lender(s) providing financing secured by the Property and/or its improvements may require certain Agreement interpretations and modifications. City shall, at any time requested by Owner or the lender, meet with Owner and representatives of such lender(s) to negotiate in good faith any such interpretation or modification. City will not unreasonably withhold its consent to any requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

a. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

b. If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the

default during the remaining cure period allowed Owner under Section 12.1 of this Agreement.

c. Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure, shall:

i. Take that property subject to the terms of this Agreement and as Owner's successor; and

ii. Have the rights and obligations of an Assignee as set forth in Sections 12.3 and 12.4.

d. The Mortgagee shall have the right to rely on the Development assurances contained within Section 8 of this Agreement, provided that any Development proposed by the Mortgagee is in substantial conformance with the terms of this Agreement.

e. The Mortgagee shall not be liable for any defaults or monetary obligations of Owner arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue Development pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the portions of the acquired by the Mortgagee have been paid to City.

12.3 Transfer or Assignment.

a. Owner shall not sell, transfer, or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Owner's interest in all, any portion of, or any interest in the Property ("Transferred Property") without the prior written consent of City. However, in responding to a request for consent, City shall consider the following conditions and standards and if they are satisfied, City's consent shall not be unreasonably withheld:

i. If significant financial commitments and/or substantial development actions are required by the transferee to complete the Project, the transferee must possess the business experience, good reputation and financial (or access to financial resources) necessary to complete the Project;

ii. The transferee must execute an assumption and assignment agreement in a form approved by the City Attorney to expressly and unconditionally assume all duties and obligations of Owner under this Agreement remaining to be performed at this time of the Assignment;

iii. The Assignment will not cause a substantial delay in the Project; and

iv. Owner is not in material breach with respect to its obligations under this Agreement.

b. Owner's request for City's consent to transfer shall be in writing and accompanied by all supporting information to satisfy the conditions set forth in subsection (a). Failure to provide any or all of the information required to satisfy the conditions set forth in subsection (a) shall be grounds to deny the transfer. The City shall have sixty (60) days to approve or deny the requested transfer.

c. A transfer between or among Owner and the managing member of the limited liability company is exempt from the requirements of subsection (a) and does not require the City's consent.

12.4 Effect of Assignment. Upon an Assignment:

a. The Assignee shall be liable for the performance of all obligations of Owner with respect to Transferred Property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

b. The owner of the Retained Property shall be liable for the performance of all obligations of Owner with respect to Retained Property, but shall have no further obligations with respect to the Transferred Property.

c. The Assignee's exercise, use and enjoyment of the Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Owner.

13. MISCELLANEOUS PROVISIONS.

13.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

13.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting the subject matter of this Agreement.

13.3 Recorded Statement Upon Termination. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination signed by the appropriate agents of City, shall be recorded in the Official Records of Contra Costa County, California.

13.4 Project as a Private Undertaking. It is specifically understood by City and Owner that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (iii) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

13.5 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.

13.6 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

13.7 Consent. Where the consent or approval of City or Owner is needed to implement Development under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

13.8 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

13.9 Execution and Recording. The City Clerk shall cause a copy of this Agreement to be signed by the appropriate representatives of the City and recorded with the Office of the County Recorder of Contra Costa County, California, within ten (10) days following the effective date of Ordinance No. 580, the ordinance adopting this Agreement. The failure of the City to sign and/or record this Agreement shall not affect the validity of and binding obligations set forth within this Agreement.

13.10 Delay, Extension of Time for Performance. Performance by either Party of its obligations under this Agreement shall be excused, and the Term shall be extended, during any period of delay caused at any time by reason of any event beyond the control of City or Owner which prevents or delays performance by City or Owner of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, enactment of new conflicting federal or state laws or regulations (example: listing of a species as threatened or endangered), judicial actions such as the issuance of restraining orders and injunctions, delay in the issuance of bonds or formation of any community facilities or assessment districts, and riots, strikes, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay or default is beyond the control of City or Owner and is excused, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. If a Party's delay or default is

not excused, the Party making the request may seek judicial review of the need for the delay, including requests for injunctive relief.

13.11 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California.

13.12 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

13.13 Estoppel Certificate. Within ten (10) business days following a written request by any of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party. Owner shall pay to City all costs incurred by City in connection with the issuance of estoppel certificates under this Section 13.13 prior to City's issuance of such certificates.

13.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

13.15 Future Litigation Expenses.

a. *Payment to Prevailing Party.* If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.

b. *Scope of Fees.* Attorneys' fees under this Section shall include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.

c. *Limitation of Liability.* Owner's obligations under this Agreement are solely those of Owner. In no event shall any present, past or future officer, director, shareholder, employee, partner, affiliate, manager, representative or agent of Owner ("Related Parties") have any personal liability, directly or indirectly, under this Agreement.

Recourse in any way connected with or arising from this Agreement shall not be available against any Related Party.

[Signatures on the following pages]

SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT

CITY:

THE CITY OF LAFAYETTE, a California municipal corporation

By: _____
Steven Falk
City Manager

ATTEST:

_____
Joanne Robbins
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian
City Attorney

SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT

OWNER:

OWENS LAFAYETTE PROPERTIES, LLC, a California limited liability company

By: _____

Its: _____

APPROVED AS TO LEGAL FORM:

GAGEN, MCCOY, MCMAHON & ARMSTRONG

_____
Allan Moore

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "B-1"

GENERAL PLAN AMENDMENT

[Attached behind this page]

EXHIBIT "B-2"

ZONING AMENDMENT

[Attached behind this page]

EXHIBIT "C"

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The Redevelopment City of the
City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549
Attn: Executive Director

[Fee Exempt – Gov't Code § 27383]
(Space above for Recorder's Use)

REGULATORY AGREEMENT

by and between

THE CITY OF LAFAYETTE,
a municipal corporation

and

_____

[Dated _____, 2008 for reference purposes only]

This CITY OF LAFAYETTE REGULATORY AGREEMENT ("Regulatory Agreement") is made and entered into as of _____, 2008, by and between the CITY OF LAFAYETTE, a municipal corporation ("City") and _____ ("Owner").

RECITALS

A. City and Owens Lafayette Properties, LLC, a California limited liability company ("Developer") have entered into that certain Lafayette Terrace Park Development Agreement, dated as of October 14, 2008, ("Agreement") which provides for, among other things, the creation of a total of three (3) affordable housing condominium units on certain real property located within the City of Lafayette ("Affordable Units") subject to certain conditions, including the terms and conditions of this Regulatory Agreement.

B. Owner intends to purchase certain property located in the City of Lafayette, and more particularly described in the attached Exhibit A attached hereto and incorporated herein ("Home"). The Home is one of the Affordable Units.

C. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement with the City to sell the Home to the Owner at an affordable price which is below the current fair market value of the Home.

D. The purpose of this Agreement is to ensure the Home remains affordable as required by Health and Safety Code section 33334.3(f), and to require the payment of any excess proceeds of sale prior to the end of the affordability period to the City for purposes of developing or securing additional affordable units. This Agreement also provides the City an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the City's Affordable Housing Program.

E. The Owner is receiving a first mortgage loan (the "First Mortgage Loan") from _____ (the "First Lender"). The First Mortgage Loan is secured by a deed of trust dated _____, 200__, executed by the Owner in favor of First Lender and recorded in the County of Contra Costa on _____, 200__, and assigned Recorder's Serial No. _____ (the "First Mortgage Deed of Trust").

F. This Agreement shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Agreement and the City Deed of Trust shall be subordinate to the lien of the First Mortgage Deed of Trust.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERTAKINGS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, DEVELOPER AND CITY DO HEREBY COVENANT AND AGREE FOR THEMSELVES, THEIR SUCCESSORS AND ASSIGNS AS FOLLOWS:

1. Definitions of Certain Terms. As used in this Regulatory Agreement, the following words and terms shall have the meaning as provided in the Recitals or in this Section 1, unless the specific context of usage of a particular word or term may otherwise require:

1.1 Affordable Housing Cost. The term "Affordable Housing Cost" shall have the same meaning as set forth in California Health and Safety Code Section 50052.5, as that section may hereafter be amended from time-to-time, and shall provide an allowance for utilities and maintenance costs established by the State of California Department of Housing and Community Development, plus the actual homeowners associations fees, dues and assessments as established by the homeowners association from time to time.

1.2 AMI. The term "AMI" means the area median income for Contra Costa County, California adjusted for family size appropriate for the Unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and California Health and Safety Code Section 50093.

1.3 Certificate of Completion. The term "Certificate of Completion" shall mean the written certification of City that the Project is complete and in compliance with the terms and conditions of this Agreement.

1.4 Low Income Household. The words "Low Income Household" shall mean persons and families whose income does not exceed eighty percent (80%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, as amended, and Health and Safety Code Section 50093, as this section may hereafter be amended from time-to-time by the State of California. In no event, however, shall the stated threshold for a Low Income Household be, for purposes of this Agreement, less than eighty percent (80%) of the then-current area median income of the County of Contra Costa.

1.5 Moderate Income Household The words "Moderate Income Household" shall mean persons and families whose income does not exceed one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa adjusted for family size by the State Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to tome by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. as amended, and California Health and Safety Code Section 50093, as it may be amended from time-to-time. In no event, however, shall the stated threshold for a Moderate Income Household be, for purpose of this Agreement, less than one hundred twenty percent (120%) of the then-current area median income of the County of Contra Costa.

1.6 Qualifying Household. The words "Qualifying Household" shall mean the household of any Unit within the Project who shall, at the commencement of the occupancy of a

Unit, have an income that does not exceed the Qualifying Household Income applicable to such Unit, as provided in this Regulatory Agreement.

1.7 Qualifying Household Income. The words "Qualifying Household Income" shall mean in the case of the Home, household income that, at the commencement of the occupancy of a Unit, is equal to a Low Income Household or Moderate Income Household.

1.8 Unit. The term "Unit" shall mean one (1) of the Affordable Housing Units.

2. Description of Property. This Agreement concerns the real property in the City of Lafayette, State of California located at _____, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. Owner Covenants and Certifications; Owner Occupancy Requirement.

A. The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above.

B. The Owner for itself, its heirs, successors and assigns, hereby covenants and agrees that during the term of this Agreement the Home shall be occupied by the Owner as its principal residence, and that the Home shall, except as otherwise permitted by this Agreement, be reserved for sale, use and occupancy by the Owner and/or for another Qualified Household as a successor-in-interest at an Affordable Housing Cost. The Owner shall be considered as occupying the Home if the Owner is living in the Home for at least ten (10) months out of each calendar year. The Owner, for itself, its heirs, successors and assigns, further covenants and agrees that, during the term of this Agreement, the City shall have the right and duty as provided in this Agreement to verify that each proposed successor-in-interest of the Owner in the Home satisfies the income requirements of a Qualified Household, and the completion of any resale or Transfer of the Home to a successor-in-interest shall be subject to City approval. The Owner shall provide an annual written certification to the City that the Owner is occupying the Home as his or her principal place of residence, which written certification shall, at City's request, include State and Federal income tax returns and current wage, income and salary statements for all persons residing in the Home.

4. Leasing of Home. The Owner shall not lease the Home to another party. Any lease in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust.

5. Maintenance and Insurance Requirements. The Owner, for itself, its successors and assigns, hereby covenants and agrees that:

A. The interior and exterior areas of the Home shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during the term of this Agreement, there is an occurrence of an adverse

condition on any area of the Home in contravention of the general maintenance standard described above, (a "Maintenance Deficiency") then the City shall notify the Owner in writing of the Maintenance Deficiency and give the Owner at least thirty (30) days from the date of such notice to cure the Maintenance Deficiency as identified in the notice.

In the event the Owner fails to cure or commence to cure the Maintenance Deficiency within the time allowed, the City may thereafter, without providing further notice of default, conduct a public hearing following transmittal of written notice thereof to the Owner ten (10) days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether the Owner has failed to comply with the provision of this Section 5A. If, upon the conclusion of a public hearing, the City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter the City shall have the right to enter the Home (exterior areas only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity the City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency as authorized by this Section 5A shall become a lien on the Home. If the amount of the lien is not paid within thirty (30) days after written demand for payment by the City to the Owner, the City shall have the right to enforce the lien in the manner as provided in Section 5B.

B. The parties hereto further mutually understand and agree that the rights conferred upon the City under this Section 5A expressly include the power to establish and enforce a lien or other encumbrance against the Home in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount as reasonably necessary to restore the Home to the maintenance standard required under Section 5A, including attorneys' fees and costs of the City associated with the abatement of the Maintenance Deficiency and the collection of the costs of the City in connection with such action. In any legal proceeding for enforcing such a lien against the Home, the prevailing party shall be entitled to recover its attorneys' fees and costs of suit. The provisions of this Section 5, shall be a covenant running with the land for the term of this Agreement and shall be enforceable by the City in its discretion, cumulative with any other rights or powers granted by the City under this Agreement or applicable law.

6. Restrictions on Resale/Transfer of the Home. Any Transfer or resale of the Home will be subject to the provisions of this Agreement including, without limitation, the City Option described in Section 12 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home, including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by devise or inheritance to an existing spouse, domestic partner, or a spouse as part of a dissolution proceeding, or in connection with marriage, shall not be considered a Transfer for the purposes of this Agreement. A transfer to children of the Owner where the income of such children exceeds the income requirements of a Qualifying Household, shall give rise to the option in favor of the City to purchase the Home as described in Section 12.

7. Notice of Intended Transfer; Preparation of Home For Sale.

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Transfer"). The Owner's Notice of Intent to Transfer shall be sent to the City by certified mail, return receipt requested at the address provided in this Agreement. The Owner's Notice of Intent to Transfer shall include the information necessary for the City to determine the Maximum Allowable Sales Price of the Home, including the following information:

(1) the address of the Property;

(2) the date of purchase of the Home by the Owner;

(3) the purchase price of the Home paid by the Owner at the time of his/her purchase;

(4) the date on which Owner intends to vacate Home;

(5) the date Home will be placed on the market; and

(6) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. Following delivery to the City of the Owner's Notice of Intent to Transfer, the Owner shall prepare the Home for sale, as follows:

(1) not earlier than ten (10) business days following the date of the Owner's Notice of Intent to Sell, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition;

(2) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

8. City Response to Owner's Notice of Intent to Transfer. The City shall respond in writing (the "First City Response Notice") to the Owner's Notice of Intent to Transfer within ten (10) business days following City receipt of a complete Owner's Notice of Intent to Transfer that includes all information required under Section 7 above. The First City Response Notice shall inform the Owner of the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Allowable Sales Price the Owner may receive for the Home, calculated by the City pursuant to Section 10 below.

9. Owner Acknowledgement of City Response Notice. No later than ten (10) business days following the date of the First City Response Notice, the Owner shall acknowledge in writing to the City that he/she has received the City Response Notice and still intends to Transfer the Home.

10. Determination of Maximum Allowable Sales Price for Restricted Sales. If the Owner sells to an Eligible Purchaser within forty-five (45) years from the date of purchase of the Home by the Owner, the maximum sales price (the "Maximum Allowable Sales Price") that the Owner shall receive from the Eligible Purchaser for purchase of the Home shall be the Affordable Price, but in no event greater than the Unrestricted Fair Market Value.

A. Affordable Price. The Affordable Price of the Home means the affordable price for a Qualifying Household.

B. Unrestricted Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home (the "Unrestricted Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Maximum Allowable Sales Price exceeds the Unrestricted Fair Market Value in order to determine the Maximum Allowable Sales Price pursuant to Section 10; (2) where the Owner is selling the Home to a Market Purchaser (defined below) at an unrestricted price pursuant to Section 13; and (3) where the Owner wishes to refinance the First Mortgage Loan as described in Section 24 below. If it is necessary to determine the Unrestricted Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. The cost of the appraisal shall be shared equally by the City and the Owner, unless the appraisal is obtained for sale to a new Market Purchaser, or unless the appraisal is necessary because the Owner wishes to refinance the First Mortgage Loan pursuant to Section 24 below, in which event the Owner shall pay the cost of the appraisal. Nothing in this section shall preclude the Owner and the City from establishing the Unrestricted Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

C. Holdback for Damage Repair Cost. If the City finds that the Owner, through neglect, abuse, or lack of adequate maintenance, has damaged the Home, the City may require that reasonable repairs be made at the Owner's cost prior to sale or through the escrow for the sale of the Home.

11. Sale of Home to Eligible Purchaser at Restricted Price. Following receipt of the First City Response Notice notifying the Owner of the Maximum Allowable Sales Price, the Owner may proceed to sell the Home within forty-five (45) years from the date of purchase of the Home by the Owner in compliance with the following requirements:

A. Marketing Period. The Owner shall have two hundred forty (240) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona fide good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 11, including listing the Home on the Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's resale and occupancy agreement

with City option to purchase that will have to be executed by a Proposed Purchaser. A proposed purchaser ("Proposed Purchaser"), who the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

(1) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership.

(2) Agreement to Sign Buyer's Regulatory Agreement and to Cooperate with City. The Proposed Purchaser shall agree to sign a buyer's resale and occupancy agreement with City option to purchase restricting future resale of the Home for the duration of the Term and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the buyer's resale and occupancy agreement with City option to purchase.

(3) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the income level designated by the City in the First City Response Notice for a Qualified Household.

C. Maximum Allowable Sales Price and Closing Costs. The purchase price for the sale of the Home by the Owner to the Proposed Purchaser shall not exceed the Maximum Allowable Sales Price calculated by the City pursuant to Section 10 above, as set forth in the First City Response Notice. The Maximum Allowable Sales Price shall not include closing costs paid by the Proposed Purchaser. The closing costs paid by the Proposed Purchaser shall not exceed reasonable and customary buyers' closing costs in the County of Contra Costa.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

(1) The name, address and telephone number in writing of the Proposed Purchaser.

(2) A signed financial statement of the Proposed Purchaser in a form acceptable to the City and any other supporting documentation requested by the City, which may include but shall not be limited to State and Federal income tax returns from the Proposed Purchaser for the previous three (3) years. The financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(3) The proposed sales contract and all other related documents which shall set forth all the terms of the resale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, (c) escrow costs and

charges, (d) Realtor broker fees and any other resale costs, charges credits, allowances or other consideration, if any.

(4) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the City and its designee harmless and reimburse the City's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(5) An executed buyer's resale and occupancy agreement and City option to purchase and an executed deed of trust from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale and occupancy agreement and City option to purchase shall be a condition of the City's approval of the proposed sale.

(6) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(7) An appropriate mortgage credit reference for the Proposed Purchaser with a written authorization signed by the Proposed Purchaser authorizing the City to contact each such reference; and

(8) Such other relevant information as the City may reasonably request.

If, following City's review of the documents and materials above, City reasonably determines that the Proposed Purchaser is income-qualified as an Eligible Purchaser and that the resale of the Home will fulfill the terms and conditions of this Agreement, the City shall deliver a written acknowledgment to the Owner and Proposed Purchaser indicating its approval of the resale of the Home to the Proposed Purchaser and thereafter, the Proposed Purchaser may acquire the Home subject to the satisfaction of all terms and conditions of this Agreement.

Upon the close of the proposed sale, Owner and Proposed Purchaser shall provide to City certified copies of the recorded City deed of trust and buyer's regulatory agreement, a copy of the

final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

E. Failure To Locate Eligible Purchaser: Notice to City. If, despite bona fide good faith marketing efforts, the Owner is unable to locate an Eligible Purchaser satisfactory to City during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the City shall provide a second response notice to the Owner (the "Second City Response Notice") stating either (1) that the City will exercise the City Option to purchase the Home pursuant to Section 12 below, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at Unrestricted Fair Market Value (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the City as set forth in Section 13 below.

12. City Purchase Option.

A. Exercise of Option. If the Owner fails to locate an Eligible Purchaser to purchase a Home at or below the Maximum Allowable Sales Price within forty-five (45) years from the date of purchase of the Home by the Owner or in the event the Owner desires to Transfer or vacate the Home after this period but within the Term, the City shall then have the option to purchase the Home (the "City Option") for the City Option Purchase Price, as defined below. The City Option may be exercised by the City in the Second City Response Notice (as described in Section 11E above, to be sent by the City to the Owner within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser) or within thirty (30) days of City's receipt of Owner's Notice of Intent to Transfer if the forty-five (45) year period from the date of purchase of the Home by the Owner has lapsed. If the City exercises the City Option, the City shall purchase the Home within seventy-five (75) days of the date of the City notice to exercise the City Option. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the City Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. In the event of exercise of the City Option and purchase of the Home by the City or its designee, the Owner shall permit a final walk-through of the Home by the City in the final three (3) days prior to close of escrow on the Transfer.

B. City Option Price. If the City exercises the City Option, the purchase price to be paid by the City (the "City Option Purchase Price") shall be the highest of the following: (1) the outstanding principal balance of the First Mortgage Loan; (2) the total of the outstanding principal balance of the First Mortgage Loan and any purchase money second mortgage loan; or (3) the Affordable Price of the Home, assuming a loan for 95% of the sales price, at currently prevailing interest rates for fixed rate, fully amortized, thirty year term conforming home loans.

13. Unrestricted Sales. If the Second City Response Notice or other City notice states that the City will not exercise the City Option or the City or its designee fails to purchase the Home within seventy-five (75) days following the date of the City notice to

exercise the City Option, the Owner may proceed to Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, for Unrestricted Fair Market Value of the Home (supported by an MAI or other qualified appraisal). In the event that the Owner Transfers the Home to a Market Purchaser, the Owner shall pay all Excess Sales Proceeds to the City as set forth in Section 14 below.

If the Owner Transfers the Home pursuant to this Section 13, the Market Purchaser shall not be required to execute a buyer's resale and occupancy agreement with City option to purchase, and the City shall reconvey and release the liens of this Agreement and the City Deed of Trust from the Home, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 14 below prior to said reconveyance and release. The Owner shall provide the City with the following documentation associated with such a Transfer:

(1) The name and address of the purchaser;

(2) The final sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, (c) escrow costs and charges, (d) real estate brokerage fees and any other resale costs, charges and any credits, allowances or other consideration, if any.

(3) A written certification, from the Owner and the Market Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) A copy of the MAI or other qualified appraisal for the Home.

(5) Upon the close of the proposed sale, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

14. Payment to City of Excess Sales Proceeds. If the Owner Transfers the Home at Unrestricted Fair Market Value pursuant to Section 13 above, or if the Owner makes a

Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean ninety percent (90%) of the amount by which the Unrestricted Fair Market Value for the Home exceeds the Maximum Allowable Sales Price for the Home (in the amount that was stated in the First City Response Notice). This amount shall be a debt of the Owner to the City, secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same net sales proceeds (following payment by Owner of a standard broker's commission) from sale of the Home at an unrestricted price to ~~a~~ Market Purchaser as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Allowable Sales Price.

15. Defaults.

A. The following events shall constitute a Default by the Owner under this Agreement:

(1) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the Home or in connection with its obligations under this Agreement;

(2) The Owner fails to owner-occupy the home, as required pursuant to Section 3 above, and such failure continues for a period of sixty (60) days following written notice by the City;

(3) The Owner makes a Transfer in violation of this Agreement;

(4) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the City within ten (10) days after the date of written notice by the City to the Owner of such violation; or

(5) A notice of default is issued under First Mortgage Loan or other financing secured by the Home.

(6) A lien or mortgage is recorded against the Home, without prior approval of the City.

B. Upon a declaration of Default by the City under this Agreement, the City may exercise any remedies at law or in equity, including without limitation, any or all of the following:

(1) Declare all Excess Sales Proceeds immediately due and payable without further demand and invoke the power of sale under the City Deed of Trust;

(2) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(3) Declare a Default under the City Deed of Trust and pursue all City remedies under the City Deed of Trust; and

(4) Exercise the City Purchase Option Upon Default as described in Section 17 below.

16. Notice of Default and Foreclosure. In the event that Owner breaches any of the terms and conditions of this Agreement, City shall send written notice to Owner demanding that Owner cure said breach within thirty (30) days of the date of City's notice. If Owner fails to cure such breach within thirty (30) days after the delivery of the City a notice (or where the breach is of the nature which cannot be cured within such 30-day period, Owner fails to commence to cure such breach within the same 30-day period, City shall be entitled to declare Owner to be in default of this Agreement ("Default") and shall send written notice of such declaration of Default to Owner.

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home shall be recorded by the City in the Office of the Recorder of the County of Contra Costa for the benefit of the City. The City may declare a Default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Sections 15 and 17.

In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the City failed to file the request for notice of default, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

17. Purchase Option Upon Default. Notwithstanding, and in addition to, the remedies provided the City in Section 16, and the City Option provided to the City in Section 12, the Owner hereby grants to the City the option to purchase the Home following written notice by the City to the Owner of the declaration of a Default by the City under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Home made possible by the City.

The City shall have thirty (30) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 17. Not later than ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option under this Section 17, the City shall purchase the Home for the City Option

Price, payable in cash or by assuming existing debt and paying the balance in cash, calculated in the manner set forth in Section 12B.

During the term of this Agreement, the City shall have the right (but not the obligation) to bid on the purchase of any mortgage loan lien secured by the Home at the time of any trustee foreclosure sale or any judicial foreclosure sale. This City right is separate and distinct from the Default Purchase Option described above and no other provisions of this Section 17 shall limit or invalidate City's rights contained in this paragraph.

18. Nonliability of the City

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 12 and 17 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a City affordable housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

19. Restrictions on Foreclosure Proceeds. If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Allowable Sales Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home made possible by the City.

Notwithstanding any other provision of this Agreement to the contrary, the obligation to pay City excess foreclosure proceeds pursuant to this Section 19 shall survive the termination of this Agreement until City has received payment in full of any excess foreclosure proceeds to which City is entitled under this Section 19.

20. Restriction on Insurance Proceeds. If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay the City the portion of any insurance proceeds received by the Owner for such destruction or damage which is in excess of the Maximum Allowable Sales Price calculated pursuant to Section 10 above.

21. Term of Agreement. All the provisions of this Agreement, including the benefits and burdens, run with the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (i) ninety-nine (99) years from the date of purchase of the Home by Owner, or (ii) the date of Transfer of the Home to the City or another purchaser for Unrestricted Fair Market Value in compliance with this Agreement.

22. Superiority of Agreement. The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

23. Subordination. Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender, (iii) the City shall not have exercised its option to purchase the Home pursuant to Section 17 above within such sixty (60)-day period and then proceeded diligently to cure the default within sixty (60) days of acquiring title to the Home.

24. Negative Amortization Loan; Refinance of First Mortgage Loan; and Further Encumbrance of Home.

A. The Owner covenants and agrees not to enter into any negative amortizing loan or any loan that has a significant built in payment increase, ie. interest only loan, or hybrid adjustment rate mortgage.

B. The City agrees to promptly upon request execute and deliver any documents reasonably requested to subordinate this Agreement and the City Deed of Trust to a deed of trust securing a refinanced First Mortgage Loan provided that, following such refinance, the principal amount of all debt secured by the Home will not exceed the greater of the outstanding principal balance of the refinanced First Mortgage Loan or ninety-five percent (95%) of the Indexed Value of the Home, determined in accordance with Section 10A above.

C. The Owner covenants and agrees: (i) not to place any mortgage or deeds of trust on the Home without obtaining prior written consent of the City; and (ii) that the total principal amount of all debt secured by the Home shall not exceed ninety-five percent (95%) of the Indexed Value of the Home, determined in accordance with Section 10A above, unless specifically approved in writing by the City. The City and the Owner agree that the requirements of Section 24 are necessary to ensure the continued affordability of the Home to Owner and to minimize the risk of loss of the Home by Owner through default and foreclosure of mortgage loans. Owner further acknowledges that violation of the provisions of this Section 24 shall constitute a Default under this Agreement.

25. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

26. Rights of Beneficiaries Under Deeds of Trust. This Agreement shall not diminish or affect the rights of the City under the City Deed of Trust.

This Agreement shall not diminish or affect the rights of the California Housing Finance City ("CHFA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Mortgage Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above.

Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of one of the following events:

A. Title is acquired by CHFA, HUD, FNMA, VA, the First Lender or another party upon foreclosure of a deed of trust to the First Lender or CHFA, or a deed of trust insured by HUD or guaranteed by VA.

B. Title is acquired by another party by a deed in lieu of foreclosure of the First Lender, CHFA, or FNMA deed of trust.

27. Remedies. Upon the occurrence of an Event of Default, City shall, in addition to the remedial provisions of Section 6 as related to a Maintenance Deficiency at the Property, be entitled to seek any appropriate remedy or damages by initiating legal proceedings as follows: (i) by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of City; or (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and agreements of Developer to City.

27.1. Rights and Remedies are Cumulative. The rights and remedies of City as set forth in this Section 11 are cumulative and the exercise by City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Developer.

27.2 Enforcement by Third Parties. Except for the City, which shall have the power to enforce this Regulatory Agreement as the successor of City, no third party shall have any right or power to enforce any provision of this Regulatory Agreement on behalf of City or to compel City to enforce any provision of this Regulatory Agreement against Developer or the Project.

28. Governing Law. This Regulatory Agreement shall be governed by the laws of the State of California, without regard to its conflicts of laws principles.

29. Amendment. This Regulatory Agreement may be amended after its recordation only by a written instrument executed by Developer and by City.

30. Attorney's Fees. In the event that a party brings an action to enforce any condition or covenant, representation or warranty in this Regulatory Agreement or otherwise arising out of this Regulatory Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorneys' fees to be fixed by the court in which a judgment is entered, as well as the costs of such suit. For the purposes of this Section 14, the words "reasonable attorneys' fees" in the case of City, include the salaries, costs and overhead of the lawyers employed as city attorneys of the City who provide legal counsel to City in such an action as well as any City attorney, as allocated on an hourly basis.

31. Severability. If any provision of this Regulatory Agreement shall be declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction such invalidity or unenforceability of such provision shall not affect the remaining parts of this Regulatory Agreement which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

32. Time is of the Essence. For each provision of this Regulatory Agreement which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

33. Notice. Any notice required to be given under this Regulatory Agreement shall be given by City or by Developer, as applicable, by personal delivery or by First Class United States mail at the addresses specified below or at such other address as may be specified in writing by the parties hereto:

to Owner:	with copy to:

to City:	with copy to:
City of Lafayette 3675 Mt. Diablo Blvd., Suite 210 Lafayette, California 94549 Attn: City Manager Facsimile: (925) 284-3169	Best Best & Krieger LLP 2001 N. Main Street, Suite 390 Walnut Creek, California 94596 Attn: Malathy Subramanian Facsimile: (925) 977-1870

Notice shall be deemed given five (5) calendar days after the date of mailing to the party, or, if personally delivered, when received by the Executive Director of City or Developer, as applicable.

IN WITNESS WHEREOF, Owner and City have caused this Regulatory Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

[Signatures on following pages]

SIGNATURE PAGE TO
REGULATORY AGREEMENT

CITY:

CITY OF LAFAYETTE, a California municipal corporation

By: _____
Steven Falk
City Manager

ATTEST:

_____
Joanne Robbins
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
Malathy Subramanian
City Attorney

SIGNATURE PAGE TO
REGULATORY AGREEMENT

OWNER:

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2008, before me, the undersigned notary public, personally appeared _____, ☐ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:
☐ Individual(s)
☐ Corporate_____
Officer(s)_____
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Subscribing Witness
☐ Guardian/Conservator
☐ Other_____
SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
_____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, 2008, before me, the undersigned notary public, personally appeared _____, ☐ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:
☐ Individual(s)
☐ Corporate_____
Officer(s)_____
☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Subscribing Witness
☐ Guardian/Conservator
☐ Other_____
SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
_____

EXHIBIT A
TO
REGULATORY AGREEMENT

Legal Description of the Property

[Attached behind this page]

EXHIBIT D

FORM OF DEED OF TRUST

[Attached behind this page]

Complimentary Recording Requested Pursuant
To Government Code Sections 6103 And 27383

When Recorded Mail To:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, California 94549
Attn: Executive Director

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") made this _____ day of _____, 200__, among the trustor, _____ _____ ("Owner"), whose address is _____, and _____ _____ ("Trustee"), and the City of Lafayette, a municipal corporation (the "City") as Beneficiary.

The Owner, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Lafayette, Contra Costa County, State of California, described in the attached Exhibit A and more commonly known as: _____, California (the "Property").

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein referred to as the "Security";

To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Owner contained in that certain Regulatory Agreement executed by and between the Owner and the City of even date herewith (the "Regulatory Agreement") and to secure the payment of Excess Sales Proceeds (as defined in the Regulatory Agreement) that may become due by Owner to City.

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Owner herein contained.

OWNER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. Owner's Estate. That Owner is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this Deed of Trust, the Security is encumbered only by: (a) that deed of trust executed by Owner in connection with a loan made to Owner by _____ _____ (the "First Lender"), securing a promissory note executed by Owner in favor of the First Lender ("First Lender Note"), to assist in the purchase of the Property and (b) the Regulatory Agreement. Owner agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Lender" shall include all successors and assigns of the First Lender.)

2. Payment of Excess Sales Proceeds. Owner will promptly pay to the City, when and if due pursuant to the Regulatory Agreement, the Excess Sales Proceeds (as defined in the Regulatory Agreement).

3. Regulatory Agreement. Owner will observe and perform all of the covenants and agreements of the Regulatory Agreement.

4. Charges; Liens. Owner will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Owner making any payment, when due, directly to the payee thereof. Upon request by the City, Owner will promptly furnish to the City all notices of amounts due under this paragraph. In the event Owner makes payment directly, Owner will promptly discharge any lien which has priority over this Deed of Trust; provided, that Owner will not be required to discharge the lien of the Deed of Trust securing the First Lender Note (the "First Lender Deed of Trust") or any other lien described in this paragraph so long as Owner will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. Hazard Insurance. Owner will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). If the Security is located in a flood plain, Owner shall also maintain flood insurance.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Owner subject to approval by the City.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof,

and Owner shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Owner will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Owner. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless the City and Owner otherwise agree in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay any amounts due under the Regulatory Agreement, with the excess, if any, paid to Owner. If the Security is abandoned by Owner, or if Owner fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Owner that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restore or repair the Security or to pay amounts due under the Regulatory Agreement.

If the Security is acquired by the City, all right, title and interest of Owner in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediate prior to such sale or acquisition, subject to the rights of the First Lender.

6. Preservation and Maintenance of Security. Owner will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section 6, and if the Owner has not cured such condition within thirty (30) days after receiving an City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of cure.

7. Protection of the City's Security. If Owner fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, upon notice to Owner, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Security to make repairs.

Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Owner secured by this Deed of Trust. Unless Owner and City agree to other terms of payment, such amount will be payable upon notice from the City to Owner requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.

8. Inspection. The City may make or cause to be made reasonable entries upon and

inspections of the Security; provided that the City will give Owner reasonable notice of inspection.

9. Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require payment of any amounts secured by this Deed of Trust.

10. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Owner subject to the provisions of this Deed of Trust.

12. Joint and Several Liability. All covenants and agreements of Owner shall be joint and several.

13. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Owner provided for in this Deed of Trust will be given by certified mail, addressed to Owner at the address shown in the first paragraph of this Deed of Trust or such other address as Owner may designate by notice to the City as provided herein, and (b) any notice to the City will be given by express delivery, return receipt requested, to the City of Lafayette, 3675 Mt. Diablo Blvd., Suite 210, Lafayette, California 94549, Attention: City Manager, or to such other address as the City may designate by notice to Owner as provided above. Notice shall be effective as of the date received by City as shown on the return receipt.

14. Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

15. Severability. In the event that any provision or clause of this Deed of Trust or the Regulatory Agreement conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Regulatory Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Regulatory Agreement are declared to be severable.

16. Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Security. The foregoing covenant shall run with the land.

18. Nonliability for Negligence, Loss, or Damage. Owner acknowledges, understands and

agrees that the relationship between Owner and City is solely that of an owner and an administrator of an City program, and that City neither undertakes nor assumes any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Security or any other matter. City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things.

19. Indemnity. Owner agrees to defend, indemnify, and hold City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that City may incur as a direct or indirect consequence of:

(a) Owner's failure to perform any obligations as and when required by the Regulatory Agreement and this Deed of Trust; or

(b) the failure at any time of any of Owner's representations or warranties to be true and correct.

20. Acceleration; Remedies. Upon Owner's breach of any covenant or agreement of Owner in this Deed of Trust or the Regulatory Agreement, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may: (a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law, (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.

21. Owner's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Owner will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Owner pays City all sums which would be then due under this Deed of Trust and no acceleration under this Deed of Trust or the Regulatory Agreement has occurred; (b) Owner cures all breaches of any other covenants or agreements of Owner contained in the Regulatory Agreement or this Deed of Trust; (c) Owner pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Owner contained in the Regulatory Agreement or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Owner takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Owner's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Owner, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

22. Due on Transfer of the Property. Upon a Transfer (as defined in the Regulatory Agreement) of the Property or any interest in it, the City shall require immediate payment in full of all sums secured by this Deed of Trust.

23. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Regulatory Agreement to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

24. Substitute Trustee. The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. Superiority of First Lender Documents. Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of Section 24 of the Regulatory Agreement. City agrees to promptly upon request execute and deliver any documents reasonably requested to subordinate this Deed of Trust to any subsequent First Lender Deed of Trust permitted by Section 24 of the Regulatory Agreement.

Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title

to the Property pursuant to a deed or assignment in lieu of foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title by First Lender, provided that (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured or commenced to cure the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender; or (iii) the City shall not have exercised its option to purchase the Property pursuant to Section 17 of the Regulatory Agreement and then proceeded diligently to cure the default within such sixty (60)-day period.

26. Request for Notice. Owner requests that copies of the notice of default and notice of sale be sent to Owner at the address set forth in Section 13 above.

IN WITNESS WHEREOF, Owner has executed this Deed Of Trust as of the date first written above.

_____ _____

Owner